

From: Poole, Melissa
Sent: Sunday, November 2, 2014 8:40 PM
To: Tom Birmingham; Walthall, Brent
CC: Bernhardt, David L.
Subject: RE:

Thanks, Tom

-----Original Message-----

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]
Sent: Fri 10/31/2014 16:29
To: 'Walthall, Brent'
Cc: Poole, Melissa; 'Bernhardt, David L.'
Subject:

Brent,

Today I received what was represented to be Kyle Lombardi's changes to section 501, which is different than the language that was previously represented to be the agreement between Friant and Kern. It reads:

SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

- (a) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;
- (b) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or
- (c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion, and as a consequence, there is an increase in Central Valley Project yield, any such increase shall be shared equally with the State Water Project. Prior to implementing this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project.

If the above language represents your proposal to Kyle, Westlands has no objections, except for the last sentence. I do not believe the Secretary should have to confer with the state before implementing this act. However, it is not a deal killer.

Tom

From: Tom Birmingham
Sent: Monday, November 3, 2014 9:45 AM
To: John Watts
Subject: Fwd: RE:

FYI

Sent from my iPhone

Begin forwarded message:

From: "Poole, Melissa" <MelissaP@paramountfarming.com>
Date: November 2, 2014 at 8:40:24 PM MST
To: "Tom Birmingham" <tbirmingham@westlandswater.org>, "Walthall, Brent" <bwalthall@kcwa.com>
Cc: "Bernhardt, David L." <DBernhardt@BHFS.com>
Subject: RE:

Thanks, Tom

-----Original Message-----

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]
Sent: Fri 10/31/2014 16:29
To: 'Walthall, Brent'
Cc: Poole, Melissa; 'Bernhardt, David L.'
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Tom

From: Tom Birmingham
Sent: Tuesday, November 4, 2014 5:26 AM
To: John Watts
CC: David L. Bernhardt
Subject: Fwd: RE:

FYI

Sent from my iPhone

Begin forwarded message:

From: "Walthall, Brent" <bwalthall@kcwa.com>
Date: November 3, 2014 at 3:59:22 PM MST
To: Tom Birmingham <tbirmingham@westlandswater.org>
Cc: "Melissa Poole" <melissap@paramountfarming.com>, "'Bernhardt, David L.'" <DBernhardt@BHFS.com>
Subject: RE:

Hi Tom:

This is the correct language. Glad that it works for WWD. I think it works for Friant as well. The part they were interested in didn't change in our discussion with you.

Brent

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]
Sent: Friday, October 31, 2014 4:30 PM
To: Walthall, Brent
Cc: Melissa Poole; 'Bernhardt, David L.'
Subject:

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Today I received what was represented to be Kyle Lombardi's changes to section 501, which is different than the language that was previously represented to be the agreement between Friant and Kern. It reads:

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equally with the State Water Project. Prior to implementing this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project.

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Tom

From: Marklund, Chris
Sent: Tuesday, November 4, 2014 2:44 PM
To: 'Tom Birmingham'
Subject: RE: RE:

Thanks, Tom. The language below tracks with what is on the table currently. Glad to see everything is simpatico. I expect there will be additional discussion regarding the last sentence of 501 on the call tomorrow. There were a number who raised concerns about the potential interpretation that the section requires the Secretary to confer with the State.

I appreciate you working with Brent on this issue.

Chris

--

Chris Marklund
Legislative Director
Rep. David Valadao
1004 Longworth House Office Building
Washington, DC 20024
Ph: 202-225-4695
Fax: 202-225-3196
Chris.Marklund@mail.house.gov

Please follow Rep. David G. Valadao on Facebook, Twitter, and Instagram



From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Tuesday, November 04, 2014 4:29 PM
To: Marklund, Chris
Subject: Fwd: RE:

Chris,

The following is my email exchange with Brent Walthall.

Tom

Sent from my iPhone

Begin forwarded message:

From: "Walthall, Brent" <bwalthall@kcwa.com>
Date: November 3, 2014 at 3:59:22 PM MST
To: Tom Birmingham <tbirmingham@westlandswater.org>
Cc: "Melissa Poole" <melissap@paramountfarming.com>, "Bernhardt, David L." <DBernhardt@BHFS.com>
Subject: RE:

Hi Tom:

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Cc: Melissa Poole; 'Bernhardt, David L.'
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- (c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion, and as a consequence, there is an increase in Central Valley Project yield, any such increase shall be shared equally with the State Water Project. Prior to implementing this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project.

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Tom

From: Weaver, Kiel

Sent: Tuesday, November 4, 2014 2:45 PM

To: Brent Walthall (bwalthall@kcwa.com); 'Ronald D. Jacobsma'; 'Stuart Somach'; Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt; 'mitchbutler@naturalresourceresults.com'; 'jbuckman@friantwater.org'; Tom Berliner; 'Steve Chedester'; 'towater@olaughlinparis.com';

CC: Lombardi, Kyle; Marklund, Chris; Nelson, Damon; Wong, Bryson; Larrabee, Jason; Tudor, Chris; Eastman, Kevin; Berenter, Alexandra

Subject: Request for November 5 Conference call on CA water provisions

Attachments: Title V Edits.pdf

All,

Some of us House Republicans are in discussions about the attached text and what is proposed below to be an addition to the attached text.

As you can likely guess, time is of the essence in these discussions. Since you are the experts on the ground, can we do a conference call at 1pm DC time tomorrow, Wednesday, November 5, to discuss? I realize this is very last minute, but this is important so if you could join on the conference call, it would be really helpful.

The call in number is 877-913-7037, passcode is 8925817. Will send an invite shortly.

(a) In General.--Subject to the absolute priority of the Sacramento River Settlement Contractors to Sacramento River supplies over Central Valley Project diversions and the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors and other south-of-Delta settlement contractors, the Secretary is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors as prescribed below:

(1) The first 300,000 acre feet of CVP water available for allocation to CVP Agricultural water service contractors will be allocated proportionately and concurrently as follows: One acre foot to North of Delta Ag WSCs, Two acre feet to South of Delta Ag WSCs

(2) The next 400,000 acre feet of CVP water available for allocation to CVP Agricultural water service contractors will be allocated proportionately and concurrently as follows: One acre foot to North of Delta Ag WSCs, Three acre feet to South of Delta Ag WSCs

(3) All additional quantities of CVP water available for allocation to CVP Agricultural water service contractors will be allocated proportionately and concurrently as follows: One acre foot to North of Delta Ag WSCs, Four acre feet to South Delta Ag WSCs, up to the contract total.

(b) Definitions.--In this section:

(1) The term ``existing Central Valley Project agricultural water service contractors'' means all agricultural water service contractors within the CVP, both North and South of the Delta, that have a water service contract in effect, on the date of the enactment of this section, that provides water for the purpose of irrigation.

(c) If any environmental, water quality, or any other regulatory or statutory requirement impacts the ability to convey water to South of the Delta Ag WSCs in accordance with the allocation methodology prescribed in Section (a), nothing herein will prevent additional quantities of water available for allocation to CVP Ag WSCs to be delivered to North of Delta Ag Water Service Contractors, over and above the amounts prescribed in Section (a), up to the maximum quantity provided for in the water service contracts held by the North of Delta Ag Water Service Contractors.

[With this approach, I don't think we would still need the old section (b) addressing American River Division and M & I Shortage policy language, but I would have no objection if it needed to be added].

Deliveries under this language would occur at the following ratios:

	NOD AF	NOD %	SOD AF	SOD %
Totals	371,000 *	100%	1,942,000*	100%
First 300K AF (1N, 2S)	100K	27%	200K	10.3%
Next 400K (1N, 3S)	200K	54%	500K	26%
Next 500K (1N, 4S)	300K	81%	900K	46%
[after this, all goes SOD]	371K	100%	1.184M	61%

* = Total Contract amounts for NOD Ag WSCs and SOD Ag WSCs

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(B) units of the National Wildlife Refuge System;

(C) State wildlife areas; and

(D) private wetland areas.

(2) REQUIREMENTS.—A cooperative agreement under this subsection shall—

(A) include the purchase of storage capacity in non-Federal facilities from willing sellers; and

(B) provide reimbursement for the temporary use of available capacity in existing above-ground, off-stream storage and associated conveyance facilities owned by local water agencies.

(b) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Chief of the National Wildlife Refuge System and contractors of the Central Valley Project a report describing the feasibility of the agreement for long-term use described in subsection (a)(1).

TITLE V—WATER RIGHTS PROTECTIONS

SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(a) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;

(b) amends or issues one or more a new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or

~~(c)~~ (c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion, and as a consequence, there is an increase in Central Valley Project yield, any such increase shall be shared equally with the State Water Project. Prior to implementing this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project.

then, the water supply benefits of such action by the California Department of Fish and Wildlife accruing to the Central Valley Project, if any, shall be shared equally with the State Water Project.

SEC. 502. AREA OF ORIGIN PROTECTIONS.

~~(a)~~ The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley

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Project (CVP) to adhere to California's water rights laws governing water rights priorities ~~by honoring water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority,~~ including any appropriate water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2. Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

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~~(b) Any action that requires that diversions be bypassed or that involves the release of water from any CVP water storage facility taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.) shall be applied in a manner that is consistent with water rights priorities established by California law.~~

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SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

(a) The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) ~~as amended~~ and other federal laws, shall not ~~result in the involuntary reduction of water supply to individuals or districts who receive water from the State Water Project or from the United States under water rights settlement contracts, exchange contracts, water service or repayment contracts, cause redirected adverse water supply or fiscal impacts to those within the Sacramento River Watershed or the State Water Project service area.~~

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(b) ~~To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.~~

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(c) ~~Except as provided in this Act, nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange contracts and settlement contracts prior to allocation of Central Valley Project yield.~~

SEC. 504. EFFECT ON STATE LAWS.

Nothing in this Act preempts any State law in effect on the date of enactment of this Act, ~~including area of origin and other water rights protections or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law including established water rights priorities.~~

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TITLE VI—MISCELLANEOUS

SEC. 601. AUTHORIZED SERVICE AREA.

(a) In General.—The authorized service area of the Central Valley Project authorized under

Subject: Title V CA Water Discussion
Location: 877-913-7037, passcode is 8925817

Start: 11/5/2014 11:00 AM
End: 11/5/2014 12:30 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Weaver, Kiel

Required Attendees: 'Brent Walthall (bwalthall@kcwa.com)'; 'Ronald D. Jacobsma'; 'Stuart Somach'; 'Birmingham, Thomas (tbirmingham@westlandswater.org)'; 'David Bernhardt'; 'mitchbutler@naturalresourceresults.com'; 'jbuckman@friantwater.org'; 'Tom Berliner'; 'Steve Chedester'; 'towater@olaughlinparis.com'; [REDACTED]; Lombardi, Kyle; Marklund, Chris; Nelson, Damon; Wong, Bryson; Larrabee, Jason; Tudor, Chris; Eastman, Kevin; Berenter, Alexandra

Resources: 877-913-7037, passcode is 8925817

From: Ronald D. Jacobsma

Sent: Wednesday, November 5, 2014 6:09 PM

To: Weaver, Kiel; 'Brent Walthall (bwalthall@kcwa.com)'; 'Stuart Somach'; 'Birmingham, Thomas (tbirmingham@westlandswater.org)'; 'David Bernhardt'; 'mitchbutler@naturalresourceresults.com'; Jennifer Buckman; 'Tom Berliner'; 'Steve Chedester'; 'tewater@olaughlinparis.com'; [REDACTED]; Lombardi, Kyle; Marklund, Chris; Nelson, Damon; Wong, Bryson; Larrabee, Jason; Tudor, Chris; Eastman, Kevin; Berenter, Alexandra

Subject: Proposed 309(g) (or separate section 312) language

Attachments: FWA-KCWA 309(g)language-proposed by EC & FWA.docx

Please review the attached and advise as to any recommended modifications. Are we still looking for proposed revisions to 502(b) language or did I miss it?

Ronald D. Jacobsma
General Manager
Friant Water Authority
O: 559-562-6305
C: 559-799-0700

-----Original Appointment-----

From: Weaver, Kiel [<mailto:Kiel.Weaver@mail.house.gov>]

Sent: Tuesday, November 04, 2014 1:47 PM

To: Weaver, Kiel; 'Brent Walthall (bwalthall@kcwa.com)'; Ronald D. Jacobsma; 'Stuart Somach'; 'Birmingham, Thomas (tbirmingham@westlandswater.org)'; 'David Bernhardt'; 'mitchbutler@naturalresourceresults.com'; Jennifer Buckman; 'Tom Berliner'; 'Steve Chedester'; 'tewater@olaughlinparis.com'; [REDACTED]; Lombardi, Kyle; Marklund, Chris; Nelson, Damon; Wong, Bryson; Larrabee, Jason; Tudor, Chris; Eastman, Kevin; Berenter, Alexandra

Subject: Title V CA Water Discussion

When: Wednesday, November 05, 2014 10:00 AM-11:30 AM (UTC-08:00) Pacific Time (US & Canada).

Where: 877-913-7037, passcode is 8925817

This communication, including any attachments or embedded links, is for the sole use of the intended recipient(s) and may contain information that is confidential or legally protected. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, dissemination, distribution or use of this communication is strictly prohibited. If you have received this communication in error, please do not download any attachments or embedded links, notify the sender immediately by return e-mail message or call, and delete the original and all copies of the communication from your system. Thank you for your anticipated cooperation.

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1 (g) Emergency consultation.

2 If necessary to implement the provisions of this section, the Commissioner shall use the
3 emergency consultation procedures under the Endangered Species Act and its implementing
4 regulation at 50 CFR 402.05 to temporarily adjust the operating criteria under the biological
5 opinions,

6 (1) for up to 28 days of temporary operational flexibility—

7 (A) no more than necessary to achieve the purposes of this section consistent with
8 the environmental protections in subsections (d) and (e); and

9 (B) including, as appropriate, adjustments to ensure that the actual flow rates during
10 the periods of temporary operational flexibility do not count toward the 5-day and 14-
11 day running averages of tidally filtered daily Old and Middle River flow requirements
12 under the biological opinions.

13 Following the conclusion of the 28 days of temporary operational flexibility, the
14 Commissioner shall not reinitiate consultation on the adjusted operations, and no
15 mitigation shall be required, if the effects on listed fish species of these operations
16 under this section remain within the range of those authorized under the Endangered
17 Species Act.

18 (2) For adjustments to operating criteria other than under subpart (1) or to take
19 urgent actions to address water supply shortages for the least amount of time or
20 volume of diversion necessary as determined by the Commissioner, no mitigation
21 measures shall be required during the pendency of the drought emergency and such
22 consultation shall occur after two subsequent normal or above normal water years
23 have been recorded within the Central Valley Project following the termination of the
24 drought emergency declared by the Governor, and any mitigation measures imposed
25 must be based on quantitative data and required only to the extent that such data
26 demonstrates actual harm to species.

From: Stuart Somach

Sent: Wednesday, November 5, 2014 6:13 PM

To: Ronald D. Jacobsma

CC: Weaver, Kiel; Brent Walthall (bwalthall@kcwa.com); Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt; mitchbutler@naturalresourceresults.com; Jennifer Buckman; Tom Berliner; Steve Chedester; towater@olaughlinparis.com; [REDACTED]; Lombardi, Kyle; Marklund, Chris; Nelson, Damon; Wong, Bryson; Larrabee, Jason; Tudor, Chris; Eastman, Kevin; Berenter, Alexandra

Subject: Re: Proposed 309(g) (or separate section 312) language

I am and will try to get it out later tonight or first thing in the morning.

Stuart L. Somach
Somach, Simmons & Dunn
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Office 916.446.7979 | Mobile [REDACTED] | ssomach@somachlaw.com
<http://www.somachlaw.com>
Sent from my iPhone

On Nov 5, 2014, at 5:09 PM, Ronald D. Jacobsma <rjacobsma@friantwater.org> wrote:

Please review the attached and advise as to any recommended modifications. Are we still looking for proposed revisions to 502(b) language or did I miss it?

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General Manager
Friant Water Authority
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C: 559-799-0700

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Subject: Title V CA Water Discussion

When: Wednesday, November 05, 2014 10:00 AM-11:30 AM (UTC-08:00) Pacific Time (US & Canada).

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<FWA-KCWA 309(g)language-proposed by EC & FWA.docx>

From: Nelson, Damon
Sent: Friday, November 7, 2014 7:40 AM
To: Tom Birmingham; Bernhardt, David L.
Subject: DC trip

We are recommending to everyone to be in town the week of the 17th. Our thought is that it would be easier to make fast reaction edits if everyone is in town and solely focused on the bill. I'll let you know if that suggested week changes.

Damon Nelson
Deputy Chief of Staff & Legislative Director
Congressman Devin Nunes
Office: (202) 225-2523

Office Mission To ensure our constituents and all Americans live free and prosperous lives in a healthy and safe environment by serving, communicating, protecting and representing them in a professional and caring manner.



From: Tom Birmingham
Sent: Friday, November 7, 2014 9:58 AM
To: Nelson, Damon
CC: Bernhardt, David L.
Subject: Re: DC trip

I will be there.

Sent from my iPhone

On Nov 7, 2014, at 7:39 AM, "Nelson, Damon" <Damon.Nelson@mail.house.gov> wrote:

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Deputy Chief of Staff & Legislative Director
Congressman Devin Nunes
Office: (202) 225-2523

Office Mission To ensure our constituents and all Americans live free and prosperous lives in a healthy and safe environment by serving, communicating, protecting and representing them in a professional and caring manner.

<image001.jpg>

From: Nelson, Damon
Sent: Friday, November 7, 2014 10:11 AM
To: Tom Birmingham
CC: Bernhardt, David L.
Subject: RE: DC trip

The House response will be sent over to the Senate today at 3pm.

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Friday, November 07, 2014 11:58 AM
To: Nelson, Damon
Cc: Bernhardt, David L.
Subject: Re: DC trip

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<image001.jpg>

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CC: Lombardi, Kyle; Marklund, Chris; Nelson, Damon; Wong, Bryson; Larrabee, Jason; Tudor, Chris; Eastman, Kevin; Berenter, Alexandra

Subject: Re: Request for November 5 Conference call on CA water provisions

Attachments: Edits to AG Water Service Split.docx; 11-6-14 SLS Redline of Sections 502, 503[1].docx

Importance: High

I have enclosed my suggested modifications. Please do not hesitate to contact me if you have any questions. Stuart

--



Stuart L. Somach | Attorney

500 Capitol Mall, Suite 1000 | Sacramento, CA 95814

Office 916.446.7979 | **Cell** [REDACTED] | **Fax** 916.446.8199 |

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From: "Weaver, Kiel" <Kiel.Weaver@mail.house.gov>

Date: Tuesday, November 4, 2014 at 1:45 PM

To: "Walthall, Brent" <bwalthall@kcwa.com>, "Ronald D. Jacobsma" <rjacobsma@friantwater.org>, Stuart Somach <ssomach@somachlaw.com>, Thomas Birmingham <tbirmingham@westlandswater.org>, David Bernhardt <dbernhardt@bhfs.com>, "mitchbutler@naturalresourceresults.com" <mitchbutler@naturalresourceresults.com>, Jennifer Buckman <jbuckman@friantwater.org>, "Berliner, Thomas M." <TMBerliner@duanemorris.com>, 'Steve Chedester' <stevechedester@sjrecwa.net>, "tewater@olaughlinparis.com" <tewater@olaughlinparis.com>, [REDACTED] <[REDACTED]>

Cc: "Lombardi, Kyle" <Kyle.Lombardi@mail.house.gov>, "Marklund, Chris" <Chris.Marklund@mail.house.gov>, "Nelson, Damon" <Damon.Nelson@mail.house.gov>, "Wong, Bryson" <Bryson.Wong@mail.house.gov>, "Larrabee, Jason" <Jason.Larrabee@mail.house.gov>, "Tudor, Chris" <Chris.Tudor@mail.house.gov>, "Eastman, Kevin" <Kevin.Eastman@mail.house.gov>, "Berenter, Alexandra" <Alexandra.Berenter@mail.house.gov>

Subject: Request for November 5 Conference call on CA water provisions

All,

Some of us House Republicans are in discussions about the attached text and what is proposed below to be an addition to the attached text.

As you can likely guess, time is of the essence in these discussions. Since you are the experts on the ground, can we do a conference call at 1pm DC time tomorrow, Wednesday, November 5, to discuss? I realize this is very last minute, but this is important so if you could join on the conference call, it would be really helpful.

The call in number is 877-913-7037, passcode is 8925817. Will send an invite shortly.

(a) In General.--Subject to the absolute priority of the Sacramento River Settlement Contractors to Sacramento River supplies over Central Valley Project diversions and the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors and other south-of-Delta settlement contractors, the Secretary is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors as prescribed below:

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(b) Definitions.--In this section:

(1) The term ``existing Central Valley Project agricultural water service contractors'' means all agricultural water service contractors within the CVP, both North and South of the Delta, that have a water service contract in effect, on the date of the enactment of this section, that provides water for the purpose of irrigation.

(c) If any environmental, water quality, or any other regulatory or statutory requirement impacts the ability to convey water to South of the Delta Ag WSCs in accordance with the allocation methodology prescribed in Section (a), nothing herein will prevent additional quantities of water available for allocation to CVP Ag WSCs to be delivered to North of Delta Ag Water Service Contractors, over and above the amounts prescribed in Section (a), up to the maximum quantity provided for in the water service contracts held by the North of Delta Ag Water Service Contractors.

[With this approach, I don't think we would still need the old section (b) addressing American River Division and M & I Shortage policy language, but I would have no objection if it needed to be added].

Deliveries under this language would occur at the following ratios:

	NOD AF	NOD %	SOD AF	SOD %
Totals	371,000 *	100%	1,942,000*	100%
First 300K AF (1N, 2S)	100K	27%	200K	10.3%
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[after this, all goes SOD]	371K	100%	1.184M	61%

* = Total Contract amounts for NOD Ag WSCs and SOD Ag WSCs

(a) In General.--Subject to the absolute priority of (1) individuals or entities with the senior Sacramento River water rights, including those with Sacramento River Settlement Contracts~~ers~~, -to the diversion and use of Sacramento River water and supplies~~supplies~~ over the Central Valley Projects diversions and (2) the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors and other south-of-Delta settlement contractors, the Secretary is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors as prescribed below:

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TITLE V — WATER RIGHTS PROTECTIONS

SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) ~~(a)~~—The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California’s water rights laws governing water rights priorities ~~by honoring~~ and to honor water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2, Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) Any action by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531, et seq.) that requires that diversions from the Sacramento River and the San Joaquin River watersheds above the Delta, be bypassed or that involves the release of water from any CVP water storage facility ~~taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531, et seq.)~~ shall be applied undertaken in a manner that is consistent with water rights priorities established by California law.

(c) With respect to individuals and entities on the Sacramento River, the mandates of this Section may be met, in whole or in part, through a contract with the Secretary pursuant to Section 14 o Public Law 76-260, Act of August 4, 418, 53 Stat.

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1187 (43 USC § 389) that is in conformance with the Sacramento River Settlement Contracts renewed by the Secretary in 2005.

SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

(a) The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) as amended, and other federal laws, shall not ~~cause redirected adverse water supply or fiscal impacts to those within the Sacramento River Watershed or the State Water Project service area~~ result in the involuntary reduction of water supply to individuals or district entities with senior water rights within the Sacramento River Watershed, the San Joaquin River Watershed or those who receive water from the State Water Project or from the United States under water rights settlement contracts, exchange contracts, water service or repayment contracts.

(b) To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.

(c) Except as provided in this Act, nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange contracts and settlement contracts prior to allocation of Central Valley Project yield.

From: Marklund, Chris

Sent: Friday, November 7, 2014 10:42 AM

To: Tom Birmingham; dbernhardt@bhfs.com

CC: Butler, Jessica

Subject: FW: Request for November 5 Conference call on CA water provisions

Attachments: 97B65C33-538C-45EE-8BA0-451868421442[5].png; Edits to AG Water Service Split.docx; 11-6-14 SLS Redline of Sections 502, 503[1].docx; image001.jpg; image002.png; image003.jpg

Importance: High

Are you guys OK with the edits Stuart provided?

Chris

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Chris Marklund

Legislative Director

Rep. David Valadao

1004 Longworth House Office Building

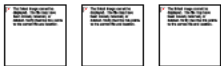
Washington, DC 20024

Ph: 202-225-4695

Fax: 202-225-3196

Chris.Marklund@mail.house.gov

Please follow Rep. David G. Valadao on Facebook, Twitter, and Instagram



From: Stuart Somach [mailto:ssomach@somachlaw.com]

Sent: Friday, November 07, 2014 12:15 PM

To: Weaver, Kiel; Brent Walthall; 'Ronald D. Jacobsma'; Birmingham, Thomas; David Bernhardt; mitchbutler@naturalresourcesresults.com; j buckman@friantwater.org; Tom Berliner; 'Steve Chedester'; towater@olaughlinparis.com; [REDACTED]

Cc: Lombardi, Kyle; Marklund, Chris; Nelson, Damon; Wong, Bryson; Larrabee, Jason; Tudor, Chris; Eastman, Kevin; Berenter, Alexandra

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Importance: High

I have enclosed my suggested modifications. Please do not hesitate to contact me if you have any questions. Stuart

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Sent: Friday, November 7, 2014 5:36 PM

To: Berliner, Thomas M.

CC: Weaver, Kiel; Brent Walthall; Ronald D. Jacobsma; Birmingham, Thomas; David Bernhardt; mitchbutler@naturalresourceresults.com; jbuckman@friantwater.org; Steve Chedester; towater@olaughlinparis.com; [REDACTED]; Lombardi, Kyle; Marklund, Chris; Nelson, Damon; Wong, Bryson; Larrabee, Jason; Tudor, Chris; Eastman, Kevin; Berenter, Alexandra

Subject: Re: Request for November 5 Conference call on CA water provisions

I agree. I did not intend to omit those references.

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Sorry to be late to this party, but it appears that Stewart removed the language addressing water rights after the reference to the exchange contract. In our prior draft, it's sought to protect both the contractual rights in the water rights of the senior Sacramento and San Joaquin diverters. The new language retains water rights protection for the Sacramento Valley senior diverters but did not do the same for the exchange contractors. The water rights language should be retained with respect to the exchange contractors as well.

Tom Berliner

Duane Morris LLP

Sorry for any typos.

On Nov 7, 2014, at 9:24 AM, Stuart Somach <ssomach@somachlaw.com> wrote:

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<97B65C33-538C-45EE-8BA0-451868421442[5].png>

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The call in number is 877-913-7037, passcode is 8925817. Will send an invite shortly.

(a) In General.--Subject to the absolute priority of the Sacramento River Settlement Contractors to Sacramento River supplies over Central Valley Project diversions and the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors and other south-of-Delta settlement contractors, the Secretary is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors as prescribed below:

(1) The first 300,000 acre feet of CVP water available for allocation to CVP Agricultural water service contractors will be allocated proportionately and concurrently as follows: One acre foot to North of Delta Ag WSCs, Two acre feet to South of Delta Ag WSCs

(2) The next 400,000 acre feet of CVP water available for allocation to CVP Agricultural water service contractors will be allocated proportionately and concurrently as follows: One acre foot to North of Delta Ag WSCs, Three acre feet to South of Delta Ag WSCs

(3) All additional quantities of CVP water available for allocation to CVP Agricultural water service contractors will be allocated proportionately and concurrently as follows: One acre foot to North of Delta Ag WSCs, Four acre feet to South Delta Ag WSCs, up to the contract total.

(b) Definitions.--In this section:

(1) The term ``existing Central Valley Project agricultural water service contractors'' means all agricultural water service contractors within the CVP, both North and South of the Delta, that have a water service contract in effect, on the date of the enactment of this section, that provides water for the purpose of irrigation.

(c) If any environmental, water quality, or any other regulatory or statutory requirement impacts the ability to convey water to South of the Delta Ag WSCs in accordance with the allocation methodology prescribed in Section (a), nothing herein will prevent additional quantities of water available for allocation to CVP Ag WSCs to be delivered to North of Delta Ag Water Service Contractors, over and above the amounts prescribed in Section (a), up to the maximum quantity provided for in the water service contracts held by the North of Delta Ag Water Service Contractors.

[With this approach, I don't think we would still need the old section (b) addressing American River Division and M & I Shortage policy language, but I would have no objection if it needed to be added].

Deliveries under this language would occur at the following ratios:

	NOD AF	NOD %	SOD AF	SOD %
Totals	371,000			
* 100%	1,942,000*	100%		
First 300K AF (1N, 2S)	100K	27%	200K	10.3%
Next 400K (1N, 3S)	200K	54%	500K	26%
Next 500K (1N, 4S)	300K	81%	900K	46%
[after this, all goes SOD]	371K	100%	1.184M	61%

* = Total Contract amounts for NOD Ag WSCs and SOD Ag WSCs

<11-6-14 SLS Redline of Sections 502, 503[1].docx>

For more information about Duane Morris, please visit <http://www.DuaneMorris.com>

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From: Tom Birmingham
Sent: Friday, November 7, 2014 5:41 PM
To: 'Walthall, Brent'; 'Melissa Poole'; 'Weiland, Paul S.'
CC: 'Bernhardt, David L.'
Subject: RE: Section 501

Brent,

I apologize for taking so long to respond to your email. I just returned from a week in Colorado. Your edits to section 501 are acceptable to Westlands.

Tom

From: Walthall, Brent [mailto:bwalthall@kcwa.com]
Sent: Thursday, November 06, 2014 4:53 PM
To: Tom Birmingham; Melissa Poole; Weiland, Paul S.
Subject: Section 501

Hi Tom:

Melissa, Paul and I worked on Section 501 today. We are trying to find a way to protect the SWP, ensure that CESA isn't *de facto* applied to the CVP by an action of DFW, and that neither the SWP nor the CVP gets less water than each would get if DFW had not pulled or modified the CD.

The language we came up with is below.

Can you please take a look at it and give us your thoughts?

Thanks,
Brent

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

- (a) revokes consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;
- (b) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or
- (c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion,

and as a consequence of the foregoing, there is an increase in Central Valley Project yield as compared to the yield available to the CVP under the Smelt Biological Opinion and the Salmonid Biological Opinion as those opinions were implemented before enactment of this Act, any such increase shall be shared equally with the State Water Project.

Within 30 days of enactment of this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project.

From: Tom Birmingham
Sent: Friday, November 7, 2014 5:45 PM
To: 'Tom Birmingham'; 'Walthall, Brent'; 'Melissa Poole'; 'Weiland, Paul S.'
CC: 'Bernhardt, David L.'
Subject: RE: Section 501

Brent,

I apologize again, but on a more careful reading of your language, I do have a problem. This language would result in the de facto application of the state law to the CVP. I propose the following:

and as a consequence of the foregoing, there is an increase in Central Valley Project yield as compared to the yield available to the CVP under the Smelt Biological Opinion and the Salmonid Biological Opinion as those opinions are implemented consistent with this Act, any such increase shall be shared equally with the State Water Project.

Tom

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Sent: Friday, November 07, 2014 4:41 PM
To: 'Walthall, Brent'; 'Melissa Poole'; 'Weiland, Paul S.'
Cc: 'Bernhardt, David L.'
Subject: RE: Section 501

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The language we came up with is below.

Can you please take a look at it and give us your thoughts?

Thanks,
Brent

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

- (a) revokes consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;
- (b) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or
- (c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion,

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Within 30 days of enactment of this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project.

From: Walthall, Brent
Sent: Monday, November 10, 2014 9:50 AM
To: Tom Birmingham; Melissa Poole; 'Weiland, Paul S.'
CC: 'Bernhardt, David L.'
Subject: RE: Section 501

No Problem. We have to get this right for both agencies.

I'll take a look and get back to you.

I hope Colorado was fun. You may recall I went to engineering school in Boulder. What a beautiful state. I'd live there again in a heartbeat.

Brent

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]
Sent: Friday, November 07, 2014 4:45 PM
To: 'Tom Birmingham'; Walthall, Brent; Melissa Poole; 'Weiland, Paul S.'
Cc: 'Bernhardt, David L.'
Subject: RE: Section 501

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The language we came up with is below.

Can you please take a look at it and give us your thoughts?

Thanks,
Brent

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(a) revokes consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;

(b) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or

(c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion,

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Within 30 days of enactment of this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project.

From: Weaver, Kiel

Sent: Monday, November 10, 2014 3:34 PM

To: Brent Walthall (bwalthall@kcwa.com); Birmingham, Thomas (tbirmingham@westlandswater.org); Mitch Butler - Natural Resource Results (mitchbutler@naturalresourceresults.com); towater@olaughlinparis.com; [REDACTED]; David Bernhardt; Ronald D. Jacobsma CPA (rjacobsma@friantwater.org); Jennifer T. Buckman - Friant (jbuckman@friantwater.org); Stuart L. Somach (ssomach@somachlaw.com); stevechedester@sjrecwa.net; tmberliner@duanemorris.net

CC: john_watts@feinstein.senate.gov

Subject: Title V -- picking up where left off

All,

We made some good progress last week on getting some resolution to Title V of the pending California water bill.

However, I think there's still some confusion and, thus, the need to have a conversation.

To that end, John Watts and I would like to do a conference call Tuesday at 2pm (DC time) or Wednesday at 1pm (DC time) to figure out where we are and to take further steps toward resolution on Title V.

Tomorrow is Veterans Day, as you know. However, we can still do a conference call at 2pm DC time if we have a sizable quorum. If this doesn't work for most of you, can we try for 1pm DC time on Wednesday.

Please let me know your availability for both times so we can schedule something. when we schedule it, I will send the most recent version that the House sent to the Feinstein office.

Let me know. Thanks

From: Walthall, Brent

Sent: Monday, November 10, 2014 3:50 PM

To: Weaver, Kiel; Birmingham, Thomas (tbirmingham@westlandswater.org); Mitch Butler - Natural Resource Results (mitchbutler@naturalresourceresults.com); towater@olaughlinparis.com; [REDACTED]; David Bernhardt; Ronald Jacobsma; Jennifer T. Buckman - Friant (jbuckman@friantwater.org); Stuart L. Somach (ssomach@somachlaw.com); stevechedester@sjrecwa.net; tmberliner@duanemorris.net

CC: john_watts@feinstein.senate.gov

Subject: RE: Title V -- picking up where left off

Hi Kiel and John:

I can do tomorrow at 2:00 DC time, 11:00 California time.

Wednesday is our board meeting day and would be difficult until after 4:30 or so California time, but that is 7:30 p.m. your time.

Thursday is good all day.

Brent

From: Weaver, Kiel [mailto:Kiel.Weaver@mail.house.gov]

Sent: Monday, November 10, 2014 2:35 PM

To: Walthall, Brent; Birmingham, Thomas (tbirmingham@westlandswater.org); Mitch Butler - Natural Resource Results (mitchbutler@naturalresourceresults.com); towater@olaughlinparis.com; [REDACTED]; David Bernhardt; Ronald Jacobsma; Jennifer T. Buckman - Friant (jbuckman@friantwater.org); Stuart L. Somach (ssomach@somachlaw.com); stevechedester@sjrecwa.net; tmberliner@duanemorris.net

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Let me know. Thanks

From: Tom Birmingham

Sent: Monday, November 10, 2014 3:55 PM

To: 'Weaver, Kiel'; 'Brent Walthall'; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; [REDACTED]; 'David Bernhardt'; 'Ronald D. Jacobsma CPA'; 'Jennifer T. Buckman - Friant'; 'Stuart L. Somach'; stevededester@sjrecwa.net; tmberliner@duanemorris.net

CC: john_watts@feinstein.senate.gov

Subject: RE: Title V -- picking up where left off

I am available and happy to participate.

From: Weaver, Kiel [mailto:Kiel.Weaver@mail.house.gov]

Sent: Monday, November 10, 2014 2:35 PM

To: Brent Walthall (bwalthall@kcwa.com); Birmingham, Thomas (tbirmingham@westlandswater.org); Mitch Butler - Natural Resource Results (mitchbutler@naturalresourcesresults.com); towater@olaughlinparis.com; [REDACTED]; David Bernhardt; Ronald D. Jacobsma CPA (rjacobsma@friantwater.org); Jennifer T. Buckman - Friant (jbuckman@friantwater.org); Stuart L. Somach (ssomach@somachlaw.com); stevededester@sjrecwa.net; tmberliner@duanemorris.net

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Let me know. Thanks

From: Ronald D. Jacobsma

Sent: Monday, November 10, 2014 3:58 PM

To: Walthall, Brent; Weaver, Kiel; Birmingham, Thomas (tbirmingham@westlandswater.org); Mitch Butler - Natural Resource Results (mitchbutler@naturalresourceresults.com); towater@olaughlinparis.com; [REDACTED]; David Bernhardt; Jennifer Buckman; Stuart L. Somach (ssomach@somachlaw.com); stevechedester@sjrecwa.net; tmberliner@duanemorris.net

CC: john_watts@feinstein.senate.gov

Subject: RE: Title V -- picking up where left off

Tomorrow would be preferable for me as well.

Ronald D. Jacobsma

General Manager

Friant Water Authority

O: 559-562-6305

C: [REDACTED]

From: Walthall, Brent [<mailto:bwalthall@kcwa.com>]

Sent: Monday, November 10, 2014 2:50 PM

To: Weaver, Kiel; Birmingham, Thomas (tbirmingham@westlandswater.org); Mitch Butler - Natural Resource Results (mitchbutler@naturalresourceresults.com); towater@olaughlinparis.com; [REDACTED]; David Bernhardt; Ronald D. Jacobsma; Jennifer Buckman; Stuart L. Somach (ssomach@somachlaw.com); stevechedester@sjrecwa.net; tmberliner@duanemorris.net

Cc: john_watts@feinstein.senate.gov

Subject: RE: Title V -- picking up where left off

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From: Steve Chedester

Sent: Monday, November 10, 2014 4:43 PM

To: Weaver, Kiel

CC: Brent Walthall (bwalthall@kcwa.com); Birmingham, Thomas (tbirmingham@westlandswater.org); Mitch Butler - Natural Resource Results (mitchbutler@naturalresourceresults.com); towater@olaughlinparis.com; [REDACTED]; David Bernhardt; Ronald D. Jacobsma CPA (rjacobsma@friantwater.org); Jennifer T. Buckman - Friant (jbuckman@friantwater.org); Stuart L. Somach (ssomach@somachlaw.com); Steve Chedester; tmberliner@duanemorris.net; john_watts@feinstein.senate.gov

Subject: Re: Title V -- picking up where left off

Either time works

Steve Chedester

SJRECWA

Sent from iPhone

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To: Steve Chedester

CC: Brent Walthall (bwalthall@kcwa.com); Birmingham, Thomas (tbirmingham@westlandswater.org); Mitch Butler - Natural Resource Results (mitchbutler@naturalresourceresults.com); towater@olaughlinparis.com; [REDACTED]; David Bernhardt; Ronald D. Jacobsma CPA (rjacobsma@friantwater.org); Jennifer T. Buckman - Friant (jbuckman@friantwater.org); Stuart L. Somach (ssomach@somachlaw.com); tmberliner@duanemorris.net; john_watts@feinstein.senate.gov

Subject: RE: Title V -- picking up where left off

Attachments: Title V - redline showing changes agreed to on group 11-5-14 calls.docx

ok. thanks for being flexible everyone. I will send an email invite out shortly for tomorrow 2pm (dc time) call.

The document we can start with is something Jennifer Buckman put together that reflects last week's conference call. I realize that there were subsequent emails thereafter....

From: Steve Chedester [stevechedester@sjrecwa.net]

Sent: Monday, November 10, 2014 6:43 PM

To: Weaver, Kiel

Cc: Brent Walthall (bwalthall@kcwa.com); Birmingham, Thomas (tbirmingham@westlandswater.org); Mitch Butler - Natural Resource Results (mitchbutler@naturalresourceresults.com); towater@olaughlinparis.com; [REDACTED]; David Bernhardt; Ronald D. Jacobsma CPA (rjacobsma@friantwater.org); Jennifer T. Buckman - Friant (jbuckman@friantwater.org); Stuart L. Somach (ssomach@somachlaw.com); Steve Chedester; tmberliner@duanemorris.net; john_watts@feinstein.senate.gov

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Let me know. Thanks

TITLE V—WATER RIGHTS PROTECTIONS

SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(a) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;

(b) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or

(c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion, and as a consequence, there is an increase in Central Valley Project yield, any such increase shall be shared equally with the State Water Project. Prior to Within 30 days of implementing this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project.

SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities and to by-honoring water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2. Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) ~~Any action that requires that diversions be bypassed or that involves the release of water from any CVP water storage facility taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.) shall be applied in a manner that is consistent with water rights priorities established by California law.~~ [Stuart Somach to provide NCWA redraft of this language consistent with the group's discussion.]

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SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

(a) The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) as amended and other federal

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laws, shall not result in the involuntary reduction of water supply or fiscal impacts to individuals or districts who receive water from the State Water Project or from the United States under water rights settlement contracts, exchange contracts, water service or repayment contracts or cause redirected adverse water supply or fiscal impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area.

(b) To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.

(c) ~~Except as provided in this Act, n~~Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange contracts and settlement contracts prior to the allocation of any other Central Valley Project ~~yield~~ water. [This language was developed in the call immediately following the large group call, per the request made to the representatives of Westlands, the Exchange Contractors, Friant and Kern.]

SEC. 504. EFFECT ON STATE LAWS.

Nothing in this Act preempts ~~any State law in effect on the date of enactment of this Act~~ or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law including established water rights priorities.

SEC. 505. [TCCA PROPOSED LANGUAGE].

[This language was provided separately. Refinements to this language were worked out after the group call by the representatives of Westlands, the Exchange Contractors, Friant and Kern.]

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From: Jeff Sutton

Sent: Monday, November 10, 2014 7:13 PM

To: Steve Chedester; Weaver, Kiel

CC: Brent Walthall (bwalthall@kcwa.com); Birmingham, Thomas (tbirmingham@westlandswater.org); Mitch Butler - Natural Resource Results (mitchbutler@naturalresourceresults.com); towater@olaughlinparis.com; David Bernhardt; Ronald D. Jacobsma CPA (rjacobsma@friantwater.org); Jennifer T. Buckman - Friant (jbuckman@friantwater.org); Stuart L. Somach (ssomach@somachlaw.com); tmberliner@duanemorris.net; john_watts@feinstein.senate.gov; Jeff Sutton

Subject: Re: Title V -- picking up where left off

Apologies, I have an appointment at 11 am tomorrow that I cannot move, but can do the Wednesday time.

On Monday, November 10, 2014 3:43 PM, Steve Chedester <stevechedester@sjrecwa.net> wrote:

Either time works

Steve Chedester

SJRECWA

Sent from iPhone

On Nov 10, 2014, at 2:34 PM, Weaver, Kiel <Kiel.Weaver@mail.house.gov> wrote:

All,

We made some good progress last week on getting some resolution to Title V of the pending California water bill.

However, I think there's still some confusion and, thus, the need to have a conversation.

To that end, John Watts and I would like to do a conference call Tuesday at 2pm (DC time) or Wednesday at 1pm (DC time) to figure out where we are and to take further steps toward resolution on Title V.

Tomorrow is Veterans Day, as you know. However, we can still do a conference call at 2pm DC time if we have a sizable quorum. If this doesn't work for most of you, can we try for 1pm DC time on Wednesday.

Please let me know your availability for both times so we can schedule something. when we schedule it, I will send the most recent version that the House sent to the Feinstein office.

Let me know. Thanks

From: Stuart Somach
Sent: Tuesday, November 11, 2014 11:10 AM
To: Weaver, Kiel; john_watts@feinstein.senate.gov
CC: Brent Walthall; Birmingham, Thomas; Mitch Butler - Natural Resource Results; towater@olaughlinparis.com; [REDACTED]; David Bernhardt; Ronald D. Jacobsma CPA; Jennifer T. Buckman - Friant; tmberliner@duanemorris.net; Steve Chedester
Subject: Re: Title V -- picking up where left off
Attachments: Edits to AG Water Service Split.docx; 11-6-14 SLS Redline of Sections 502, 503[1].docx

Importance: High

I am re-sending the redlines that I sent last week for everyone's convenience. These do **not** include the needed changes that Tom pointed out last week. I am away from my office na could not further edit from where I am.

--



Stuart L. Somach | Attorney

500 Capitol Mall, Suite 1000 | Sacramento, CA 95814
Office 916.446.7979 | **Cell** [REDACTED] | **Fax** 916.446.8199 |
ssomach@somachlaw.com
<http://www.somachlaw.com>

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From: "Weaver, Kiel" <Kiel.Weaver@mail.house.gov>
Date: Monday, November 10, 2014 at 5:35 PM
To: Steve Chedester <stevechedester@sjrecwa.net>
Cc: "Walthall, Brent" <bwalthall@kcwa.com>, Thomas Birmingham <tbirmingham@westlandswater.org>, "Mitch Butler - Natural Resource Results" (mitchbutler@naturalresourceresults.com) <mitchbutler@naturalresourceresults.com>, "towater@olaughlinparis.com" <towater@olaughlinparis.com>, [REDACTED], David Bernhardt <dbernhardt@bhfs.com>, "Ronald D. Jacobsma CPA" (rjacobsma@friantwater.org) <rjacobsma@friantwater.org>, Jennifer Buckman <jbuckman@friantwater.org>, Stuart Somach <ssomach@somachlaw.com>, "tmberliner@duanemorris.net" <tmberliner@duanemorris.net>, John Watts <john_watts@feinstein.senate.gov>
Subject: RE: Title V -- picking up where left off

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Sent: Monday, November 10, 2014 6:43 PM

To: Weaver, Kiel

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Subject: Re: Title V -- picking up where left off

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Let me know. Thanks

(a) In General.--Subject to the absolute priority of (1) individuals or entities with the senior Sacramento River water rights, including those with Sacramento River Settlement Contracts~~ers~~, to the diversion and use of Sacramento River water and supplies~~supplies~~ over the Central Valley Projects diversions and (2) the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors and other south-of-Delta settlement contractors, the Secretary is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors as prescribed below:

(1) The first 300,000 acre feet of CVP water available for allocation to CVP Agricultural water service contractors will be allocated proportionately and concurrently as follows: One acre foot to North of Delta Ag WSCs, Two acre feet to South of Delta Ag WSCs

(2) The next 400,000 acre feet of CVP water available for allocation to CVP Agricultural water service contractors will be allocated proportionately and concurrently as follows: One acre foot to North of Delta Ag WSCs, Three acre feet to South of Delta Ag WSCs

(3) All additional quantities of CVP water available for allocation to CVP Agricultural water service contractors will be allocated proportionately and concurrently as follows: One acre foot to North of Delta Ag WSCs, Four acre feet to South Delta Ag WSCs, up to the contract total.

(b) Definitions.--In this section:

(1) The term ``existing Central Valley Project agricultural water service contractors'' means all agricultural water service contractors within the CVP, both North and South of the Delta, that have a water service contract in effect, on the date of the enactment of this section, that provides water for the purpose of irrigation.

(c) If any environmental, water quality, or any other regulatory or statutory requirement impacts the ability to convey water to South of the Delta Ag WSCs in accordance with the allocation methodology prescribed in Section (a), nothing herein will prevent additional quantities of water available for allocation to CVP Ag WSCs to be delivered to

North of Delta Ag Water Service Contractors, over and above the amounts prescribed in Section (a), up to the maximum quantity provided for in the water service contracts held by the North of Delta Ag Water Service Contractors.

[With this approach, I don't think we would still need the old section (b) addressing American River Division and M & I Shortage policy language, but I would have no objection if it needed to be added].

Deliveries under this language would occur at the following ratios:

%	SOD AF	NOD AF SOD %	NOD
Totals		371,000	
* 100%		1,942,000*	100%
First 300K AF (1N, 2S)	100K	27%	200K
10.3%			
Next 400K (1N, 3S)	200K	54%	500K
26%			
Next 500K (1N, 4S)	300K	81%	900K
46%			
[after this, all goes SOD]	371K	100%	1.184M
61%			

* = Total Contract amounts for NOD Ag WSCs and SOD Ag WSCs

TITLE V — WATER RIGHTS PROTECTIONS

SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) ~~(a)~~—The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California’s water rights laws governing water rights priorities ~~by honoring~~ and to honor water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2, Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) Any action by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531, et seq.) that requires that diversions from the Sacramento River and the San Joaquin River watersheds above the Delta be bypassed or that involves the release of water from any CVP water storage facility ~~taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531, et seq.)~~ shall be applied undertaken in a manner that is consistent with water rights priorities established by California law.

(c) With respect to individuals and entities on the Sacramento River, the mandates of this Section may be met, in whole or in part, through a contract with the Secretary pursuant to Section 14 of Public Law 76-260, Act of August 4, 1958, 53 Stat.

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1187 (43 USC § 389) that is in conformance with the Sacramento River Settlement Contracts renewed by the Secretary in 2005.

SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

(a) The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) as amended, and other federal laws, shall not ~~cause redirected adverse water supply or fiscal impacts to those within the Sacramento River Watershed or the State Water Project service area~~ result in the involuntary reduction of water supply to individuals or district entities with senior water rights within the Sacramento River Watershed, the San Joaquin River Watershed or those who receive water from the State Water Project or from the United States under water rights settlement contracts, exchange contracts, water service or repayment contracts.

(b) To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.

(c) Except as provided in this Act, nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange contracts and settlement contracts prior to allocation of Central Valley Project yield.

From: Bernhardt, David L.
Sent: Tuesday, November 11, 2014 12:05 PM
To: Thomas W. Birmingham (tbirmingham@westlandswater.org)
Subject: Never mind

Never mind, you just got on.

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From: Tom Birmingham
Sent: Tuesday, November 11, 2014 12:07 PM
To: 'Bernhardt, David L.'
Subject: RE: Never mind

I had a problem with the pass code. Sorry for delay.

From: Bernhardt, David L. [mailto:DBernhardt@BHFS.com]
Sent: Tuesday, November 11, 2014 11:05 AM
To: Thomas W. Birmingham (tbirmingham@westlandswater.org)
Subject: Never mind

Never mind, you just got on.

STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling (303)-223-1300 and delete the message. Thank you.

From: Weaver, Kiel
Sent: Tuesday, November 11, 2014 12:12 PM
To: Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt
Subject: FW: Title V -- picking up where left off
Attachments: Title V - redline showing changes agreed to on group 11-5-14 calls.docx

From: Weaver, Kiel
Sent: Monday, November 10, 2014 8:35 PM
To: Steve Chedester
Cc: Brent Walthall (bwalthall@kcwa.com); Birmingham, Thomas (tbirmingham@westlandswater.org); Mitch Butler - Natural Resource Results (mitchbutler@naturalresourceresults.com); towater@olaughlinparis.com; [REDACTED]
David Bernhardt; Ronald D. Jacobsma CPA (rjacobsma@friantwater.org); Jennifer T. Buckman - Friant (jbuckman@friantwater.org); Stuart L. Somach (ssomach@somachlaw.com) ; tmberliner@duanemorris.net; john_watts@feinstein.senate.gov
Subject: RE: Title V -- picking up where left off

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David Bernhardt; Ronald D. Jacobsma CPA (rjacobsma@friantwater.org); Jennifer T. Buckman - Friant (jbuckman@friantwater.org); Stuart L. Somach (ssomach@somachlaw.com) ; Steve Chedester; tmberliner@duanemorris.net; john_watts@feinstein.senate.gov
Subject: Re: Title V -- picking up where left off

Either time works

Steve Chedester
SJRECWA
Sent from iPhone

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Please let me know your availability for both times so we can schedule something. when we schedule it, I will send the most recent version that the House sent to the Feinstein office.

Let me know. Thanks

TITLE V—WATER RIGHTS PROTECTIONS

SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(a) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;

(b) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or

(c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion, and as a consequence, there is an increase in Central Valley Project yield, any such increase shall be shared equally with the State Water Project. Prior to Within 30 days of implementing this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project.

SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities and to by honoring water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2. Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) ~~Any action that requires that diversions be bypassed or that involves the release of water from any CVP water storage facility taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.) shall be applied in a manner that is consistent with water rights priorities established by California law.~~ [Stuart Somach to provide NCWA redraft of this language consistent with the group's discussion.]

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SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

(a) The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) as amended and other federal

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laws, shall not result in the involuntary reduction of water supply or fiscal impacts to individuals or districts who receive water from the State Water Project or from the United States under water rights settlement contracts, exchange contracts, water service or repayment contracts or cause redirected adverse water supply or fiscal impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area.

(b) To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.

(c) ~~Except as provided in this Act, n~~Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange contracts and settlement contracts prior to the allocation of any other Central Valley Project ~~yield~~ water. [This language was developed in the call immediately following the large group call, per the request made to the representatives of Westlands, the Exchange Contractors, Friant and Kern.]

SEC. 504. EFFECT ON STATE LAWS.

Nothing in this Act preempts ~~any State law in effect on the date of enactment of this Act~~ or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law including established water rights priorities.

SEC. 505. [TCCA PROPOSED LANGUAGE].

[This language was provided separately. Refinements to this language were worked out after the group call by the representatives of Westlands, the Exchange Contractors, Friant and Kern.]

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From: Tom Birmingham

Sent: Tuesday, November 11, 2014 12:42 PM

To: 'Weaver, Kiel'

CC: 'Stuart L. Somach'; john_watts@feinstein.senate.gov; 'Brent Walthall'; 'Birmingham, Thomas'; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; [REDACTED]; 'David Bernhardt'; 'Ronald D. Jacobsma CPA'; 'Jennifer T. Buckman - Friant'; tmberliner@duanemorris.net; 'Steve Chedester'

Subject: FW: Title V -- picking up where left off

Attachments: 11-6-14 SLS Redline of Sections 502, 503[1].docx

Importance: High

Here are the changes to section 503(b) and 503(c) we discussed.

From: Stuart Somach [mailto:ssomach@somachlaw.com]

Sent: Tuesday, November 11, 2014 10:10 AM

To: Weaver, Kiel; john_watts@feinstein.senate.gov

Cc: Brent Walthall; Birmingham, Thomas; Mitch Butler - Natural Resource Results; towater@olaughlinparis.com; [REDACTED]; David Bernhardt; Ronald D. Jacobsma CPA; Jennifer T. Buckman - Friant; tmberliner@duanemorris.net; Steve Chedester

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ssomach@somachlaw.com

<http://www.somachlaw.com>

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<rjacobsma@friantwater.org>, Jennifer Buckman <jbuckman@friantwater.org>, Stuart Somach <ssomach@somachlaw.com>, "tmberliner@duanemorris.net" <tmberliner@duanemorris.net>, John Watts <john_watts@feinstein.senate.gov>

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SJRECWA
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TITLE V — WATER RIGHTS PROTECTIONS

SEC. 502. AREA OF ORIGIN PROTECTIONS.

(b) Any action by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531, et seq.) that requires that diversions from the Sacramento River or and the San Joaquin River watersheds upstream of above the Delta be bypassed or that involves the release of water from any CVP water storage facility taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531, et seq.) shall be applied undertaken in a manner that is consistent with water rights priorities established by California law.

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From: Jennifer Buckman

Sent: Tuesday, November 11, 2014 1:09 PM

To: Tom Birmingham; 'Weaver, Kiel'

CC: 'Stuart L. Somach '; john_watts@feinstein.senate.gov; 'Brent Walthall'; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Berliner, Thomas M.

Subject: RE: Title V -- picking up where left off

Attachments: Title V - redline showing changes agreed to on group 11-11-14 calls.docx

Importance: High

All, attached is the redrafted version of Title V, per our discussion this morning. Please note that I have corrected the email addresses for Jeff Sutton to use his work email as well as for Tom Berliner. Please let me know if you see any areas where I have failed to capture accurately the outcome of today's group discussion. Thanks – Jeni

Jennifer T. Buckman, Esq.

General Counsel

Friant Water Authority

916.382.4344

██████████ (cell)

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]

Sent: Tuesday, November 11, 2014 11:42 AM

To: 'Weaver, Kiel'

Cc: 'Stuart L. Somach '; john_watts@feinstein.senate.gov; 'Brent Walthall'; 'Birmingham, Thomas'; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; ██████████; 'David Bernhardt'; Ronald D. Jacobsma; Jennifer Buckman; tmberliner@duanemorris.net; 'Steve Chedester'

Subject: FW: Title V -- picking up where left off

Importance: High

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From: Stuart Somach [mailto:ssomach@somachlaw.com]

Sent: Tuesday, November 11, 2014 10:10 AM

To: Weaver, Kiel; john_watts@feinstein.senate.gov

Cc: Brent Walthall; Birmingham, Thomas; Mitch Butler - Natural Resource Results; towater@olaughlinparis.com; ██████████; David Bernhardt; Ronald D. Jacobsma CPA; Jennifer T. Buckman - Friant; tmberliner@duanemorris.net; Steve Chedester

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<http://www.somachlaw.com>

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From: "Weaver, Kiel" <Kiel.Weaver@mail.house.gov>
Date: Monday, November 10, 2014 at 5:35 PM
To: Steve Chedester <stevechedester@sjrecwa.net>
Cc: "Walthall, Brent" <bwalthall@kcwa.com>, Thomas Birmingham <tbirmingham@westlandswater.org>, "Mitch Butler - Natural Resource Results" (mitchbutler@naturalresourcesresults.com) <mitchbutler@naturalresourcesresults.com>, "towater@olaughlinparis.com" <towater@olaughlinparis.com>, "[REDACTED]" <[REDACTED]>, David Bernhardt <dbernhardt@bhfs.com>, "Ronald D. Jacobsma CPA" (rjacobsma@friantwater.org) <rjacobsma@friantwater.org>, Jennifer Buckman <jbuckman@friantwater.org>, Stuart Somach <ssomach@somachlaw.com>, "tmberliner@duanemorris.net" <tmberliner@duanemorris.net>, John Watts <john_watts@feinstein.senate.gov>
Subject: RE: Title V -- picking up where left off

ok. thanks for being flexible everyone. I will send an email invite out shortly for tomorrow 2pm (dc time) call.

The document we can start with is something Jennifer Buckman put together that reflects last week's conference call. I realize that there were subsequent emails thereafter....

From: Steve Chedester [stevechedester@sjrecwa.net]
Sent: Monday, November 10, 2014 6:43 PM
To: Weaver, Kiel
Cc: Brent Walthall (bwalthall@kcwa.com); Birmingham, Thomas (tbirmingham@westlandswater.org); Mitch Butler - Natural Resource Results (mitchbutler@naturalresourcesresults.com); towater@olaughlinparis.com; [REDACTED]; David Bernhardt; Ronald D. Jacobsma CPA (rjacobsma@friantwater.org); Jennifer T. Buckman - Friant (jbuckman@friantwater.org); Stuart L. Somach (ssomach@somachlaw.com) ; Steve Chedester; tmberliner@duanemorris.net; john_watts@feinstein.senate.gov
Subject: Re: Title V -- picking up where left off

Either time works

Steve Chedester
SJRECWA
Sent from iPhone

On Nov 10, 2014, at 2:34 PM, Weaver, Kiel <Kiel.Weaver@mail.house.gov> wrote:

All,

We made some good progress last week on getting some resolution to Title V of the pending California water bill.

However, I think there's still some confusion and, thus, the need to have a conversation.

To that end, John Watts and I would like to do a conference call Tuesday at 2pm (DC time) or Wednesday at 1pm (DC time) to figure out where we are and to take further steps toward resolution on Title V.

Tomorrow is Veterans Day, as you know. However, we can still do a conference call at 2pm DC time if we have a sizable quorum. If this doesn't work for most of you, can we try for 1pm DC time on Wednesday.

Please let me know your availability for both times so we can schedule something. when we schedule it, I will send the most recent version that the House sent to the Feinstein office.

Let me know. Thanks

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TITLE V—WATER RIGHTS PROTECTIONS

SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(a) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;

(b) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or

(c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion, and as a consequence, there is an increase in Central Valley Project yield, any such increase shall be shared equally with the State Water Project. ~~Prior to~~ Within 30 days of implementing this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project. [Brent and Tom Birmingham are still trading emails on this and may have changes to the language]

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SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities and to by-honoring water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2, Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) [Any action by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531, et seq.) that requires that diversions from the Sacramento River and/or the San Joaquin River watersheds aboveupstream of the Delta be bypassed or that involves the release of water from any CVP water storage facility shall be undertaken in a manner that is consistent with water rights priorities established by California law. [Stuart and Brent to have follow up discussion]

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(c) With respect to individuals and entities with water rights on the Sacramento River, the mandates of this Section may be met, in whole or in part, through a contract with the Secretary executed pursuant to Section 14 of Public Law 76-260, 53 Stat. 1187 (43 USC § 389) that is in conformance with the Sacramento River Settlement Contracts renewed by the Secretary in 2005.

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1 SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

- 2 (a) The Secretary shall ensure that, except as otherwise provided for in a water service or
3 repayment contract, actions taken in compliance with legal obligations imposed pursuant
4 to or as a result of this Act, including, but not limited to, such actions under Section 7 of
5 the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) as amended and other
6 federal laws, shall not result in the involuntary reduction of water supply or fiscal impacts
7 to individuals or districts who receive water from the State Water Project or from the
8 United States under water rights settlement contracts, exchange contracts, water service or
9 repayment contracts or cause redirected adverse water supply or fiscal impacts to those
10 within the Sacramento River watershed, the San Joaquin River watershed or the State
11 Water Project service area.
12 (b) To the extent that costs are incurred solely pursuant to or as a result of this Act and would
13 not otherwise have been incurred by any entity or public or local agency or subdivision of
14 the State of California, such costs shall not be borne by any such entity, agency, or
15 subdivision of the State of California, unless such costs are incurred on a voluntary basis.
16 (c) ~~Except as provided in this Act, n~~Nothing in this Act shall modify or amend the rights and
17 obligations of the parties to any existing water service, repayment, settlement, purchase, or
18 exchange contract with the United States, including the obligation to satisfy exchange
19 contracts and settlement contracts prior to the allocation of any other Central Valley
20 Project ~~yield~~ water.

21 SEC. 504. EFFECT ON STATE LAWS.

22 Nothing in this Act preempts ~~any State law in effect on the date of enactment of this Act or~~
23 ~~modifies any existing obligation of the United States under Federal reclamation law to operate~~
24 ~~the Central Valley Project in conformity with State law including established water rights~~
25 ~~priorities. [John objects to the deletion: there will be follow up discussion with Kyle Lombardi~~
26 ~~when he is available.]~~

27
28 SEC. 505. [TCCA PROPOSED LANGUAGE].

29 ~~[[Tom Birmingham and Jeff Sutton are working on redrafting language and will have it out to~~
30 ~~the group for review and comment by Thursday.]~~

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From: Weaver, Kiel

Sent: Wednesday, November 12, 2014 2:31 PM

To: Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt

CC: Berenter, Alexandra; Nelson, Damon

Subject: Ken Calvert wants to know.....

Tom and David,

I know your folks continue to analyze this, but have you done a numbers crunch for how much water Westlands would get under the last Feinstein proposal and the last House Republican counteroffer? Ken Calvert asked me quite a few times about this in a recent meeting and needs to know by tomorrow morning if at all possible.

*Kiel Weaver
Staff Director
House Water and Power Subcommittee
1522 Longworth HOB
Washington, DC 20515
kiel.weaver@mail.house.gov
202-225-8331*

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From: Tom Birmingham

Sent: Wednesday, November 12, 2014 3:40 PM

To: john_watts@feinstein.senate.gov; 'Weaver, Kiel'; 'Nelson, Damon'; 'Lombardi, Kyle'; 'Marklund, Chris'

CC: 'David Bernhardt'; 'Walthall, Brent'

Subject: Section 501

Gentlemen,

The following is language I drafted yesterday based on my discussions with Brent Walthall. Brent is currently reviewing the language with people in his agency. I am sending it just to keep you informed.

Tom

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(a) revokes consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;

(b) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or

(c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion,

and as a consequence of the Department's action the Central Valley Project is able to export more water than it would have exported absent the Department's action, that additional water shall be made available to the State Water Project for delivery to State Water Project contractors.

Within 30 days of enactment of this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project.

From: Tom Birmingham
Sent: Wednesday, November 12, 2014 3:45 PM
To: 'Weaver, Kiel'
CC: 'Berenter, Alexandra'; 'Nelson, Damon'; 'David Bernhardt'
Subject: RE: Ken Calvert wants to know.....

Kiel,

It is more difficult to quantify the benefits of the last Feinstein proposal than it was to quantify the benefits of HR 3964 because under the last Feinstein proposal there are still many variables that could limit operations. However, if the legislation were implemented as we expect, in other words reverse flow is managed at -5000 cfs, the average supply for south-of-Delta CVP ag service contractors would improve to approximately 55 – 60%, compared to the existing 35 – 40%.

Tom

From: Weaver, Kiel [mailto:Kiel.Weaver@mail.house.gov]
Sent: Wednesday, November 12, 2014 1:32 PM
To: Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt
Cc: Berenter, Alexandra; Nelson, Damon
Subject: Ken Calvert wants to know.....

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From: Weaver, Kiel
Sent: Wednesday, November 12, 2014 3:47 PM
To: 'tbirmingham@westlandswater.org'
CC: Berenter, Alexandra; Nelson, Damon; 'dbernhardt@bhfs.com'
Subject: Re: Ken Calvert wants to know.....

Tom, when you say HR 3964, are you referring to our provisions that we sent to watts last friday or the house passed bill from earlier this year?

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Wednesday, November 12, 2014 05:44 PM
To: Weaver, Kiel
Cc: Berenter, Alexandra; Nelson, Damon; 'David Bernhardt' <dbernhardt@bhfs.com>
Subject: RE: Ken Calvert wants to know.....

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From: Tom Birmingham
Sent: Wednesday, November 12, 2014 3:50 PM
To: Weaver, Kiel
CC: Berenter, Alexandra; Nelson, Damon; dbernhardt@bhfs.com
Subject: Re: Ken Calvert wants to know.....

I am referring to the House past bill, under which we would have had a 75 - 80% reliability.

Sent from my iPhone

On Nov 12, 2014, at 2:47 PM, "Weaver, Kiel" <Kiel.Weaver@mail.house.gov> wrote:

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From: Marklund, Chris

Sent: Wednesday, November 12, 2014 4:10 PM

To: 'Tom Birmingham'; 'john_watts@feinstein.senate.gov'; Weaver, Kiel; Nelson, Damon; Lombardi, Kyle; Butler, Jessica

CC: 'David Bernhardt'; 'Walthall, Brent'

Subject: RE: Section 501

Thanks, Tom. Looping in Jessica Butler in our office.

Chris

--

Chris Marklund

Legislative Director

Rep. David Valadao

1004 Longworth House Office Building

Washington, DC 20024

Ph: 202-225-4695

Fax: 202-225-3196

Chris.Marklund@mail.house.gov

Please follow Rep. David G. Valadao on Facebook, Twitter, and Instagram



From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]

Sent: Wednesday, November 12, 2014 5:40 PM

To: john_watts@feinstein.senate.gov; Weaver, Kiel; Nelson, Damon; Lombardi, Kyle; Marklund, Chris

Cc: 'David Bernhardt'; 'Walthall, Brent'

Subject: Section 501

Gentlemen,

The following is language I drafted yesterday based on my discussions with Brent Walthall. Brent is currently reviewing the language with people in his agency. I am sending it just to keep you informed.

Tom

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

- (a) revokes consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;
- (b) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or
- (c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion,

and as a consequence of the Department's action the Central Valley Project is able to export more water than it would have exported absent the Department's action, that additional water shall be made available to the State Water Project for delivery to State Water Project contractors.

Within 30 days of enactment of this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project.

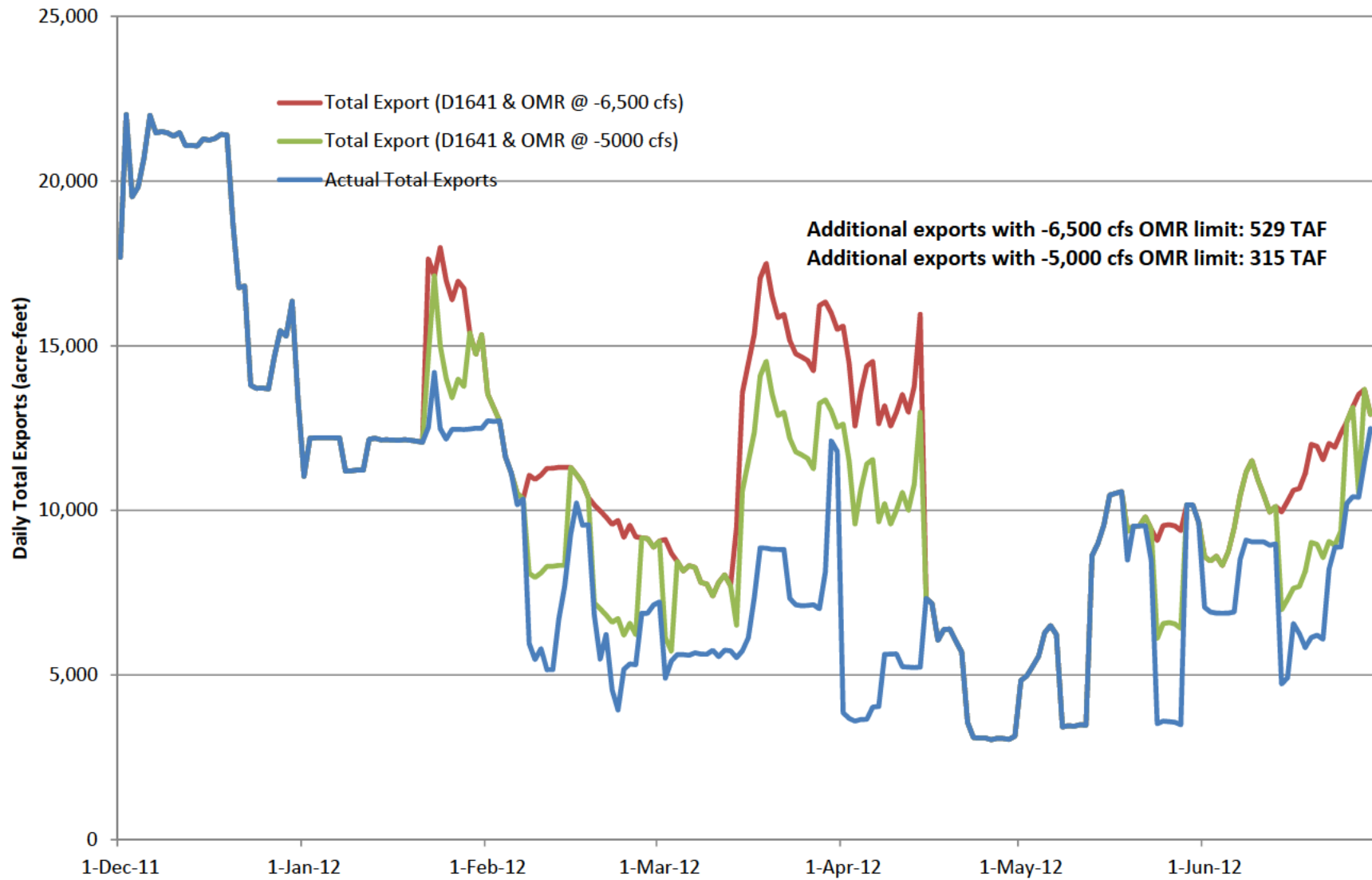
From: Tom Birmingham
Sent: Wednesday, November 12, 2014 5:29 PM
To: 'Weaver, Kiel'
CC: 'Nelson, Damon'; 'David Bernhardt'
Subject: Sample graph at -5000
Attachments: 2012 Ops at -5000_-6500.pdf

Kiel,

I don't know if this will be helpful, but attached is a graph showing potential exports v. actual operations in 2012, a dry year. This graph suggests that if the Feinstein proposal is implemented as we expect, the CVP and SWP would have picked up an additional 315,000 acre-feet. For south-of-Delta CVP ag service contractors, this would have increased our allocation by approximately 10%.

Tom

2012 Total Exports (Dec-Jun) Actual OMR Restrictions vs OMR at -6,500 & -5,000 cfs



From: Tom Birmingham

Sent: Thursday, November 13, 2014 10:45 PM

To: 'Watts, John (Feinstein)'

CC: 'David Bernhardt'

Subject: RE: Any progress yet in developing a revised definition for "negative impact on the long-term survival"? Thanks

John,

How about the following:

NEGATIVE IMPACT ON THE LONG-TERM SURVIVAL.—The term “negative impact on the long-term survival” means a population level effect that will reduce the likelihood of the species’ survival over a period of ten years.

Tom

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]

Sent: Thursday, November 13, 2014 2:05 PM

To: 'Tom Birmingham'

Subject: RE: Any progress yet in developing a revised definition for "negative impact on the long-term survival"? Thanks

Thanks.

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]

Sent: Thursday, November 13, 2014 5:05 PM

To: Watts, John (Feinstein)

Subject: Re: Any progress yet in developing a revised definition for "negative impact on the long-term survival"? Thanks

I will have it to you tonight.

Sent from my iPhone

On Nov 13, 2014, at 2:00 PM, "Watts, John (Feinstein)" <John_Watts@feinstein.senate.gov> wrote:

From: Weaver, Kiel
Sent: Friday, November 14, 2014 12:53 PM
To: 'Jennifer Buckman'; Tom Birmingham
CC: 'Stuart L. Somach'; john_watts@feinstein.senate.gov; 'Brent Walthall'; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Berliner, Thomas M.
Subject: RE: Title V -- picking up where left off

All,

John Watts and I are wondering where we are on the Title V language. As you recall, we needed something earlier today. Let's have a phone call at 5pm Eastern time today. Call in Number is 877- [REDACTED] - [REDACTED] passcode is [REDACTED] Thanks and sorry, but we need to get this done.

From: Jennifer Buckman [mailto:jbuckman@friantwater.org]
Sent: Tuesday, November 11, 2014 3:09 PM
To: Tom Birmingham; Weaver, Kiel
Cc: 'Stuart L. Somach'; john_watts@feinstein.senate.gov; 'Brent Walthall'; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Berliner, Thomas M.
Subject: RE: Title V -- picking up where left off
Importance: High

All, attached is the redrafted version of Title V, per our discussion this morning. Please note that I have corrected the email addresses for Jeff Sutton to use his work email as well as for Tom Berliner. Please let me know if you see any areas where I have failed to capture accurately the outcome of today's group discussion. Thanks – Jeni

Jennifer T. Buckman, Esq.
General Counsel
Friant Water Authority
916.382.4344
[REDACTED] (cell)

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Tuesday, November 11, 2014 11:42 AM
To: 'Weaver, Kiel'
Cc: 'Stuart L. Somach'; john_watts@feinstein.senate.gov; 'Brent Walthall'; 'Birmingham, Thomas'; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; [REDACTED]; 'David Bernhardt'; Ronald D. Jacobsma; Jennifer Buckman; tmberliner@duanemorris.net; 'Steve Chedester'
Subject: FW: Title V -- picking up where left off
Importance: High

Here are the changes to section 503(b) and 503(c) we discussed.

From: Stuart Somach [mailto:ssomach@somachlaw.com]
Sent: Tuesday, November 11, 2014 10:10 AM
To: Weaver, Kiel; john_watts@feinstein.senate.gov
Cc: Brent Walthall; Birmingham, Thomas; Mitch Butler - Natural Resource Results; towater@olaughlinparis.com; [REDACTED]; David Bernhardt; Ronald D. Jacobsma CPA; Jennifer T. Buckman - Friant;

tmberliner@duanemorris.net; Steve Chedester
Subject: Re: Title V -- picking up where left off
Importance: High

I am re-sending the redlines that I sent last week for everyone's convenience. These do **not** include the needed changes that Tom pointed out last week. I am away from my office na could not further edit from where I am.

--



Stuart L. Somach | Attorney

500 Capitol Mall, Suite 1000 | Sacramento, CA 95814
Office 916.446.7979 | **Cell** [REDACTED] | **Fax** 916.446.8199 |
ssomach@somachlaw.com
<http://www.somachlaw.com>

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Cc: "Walthall, Brent" <bwalthall@kcwa.com>, Thomas Birmingham <tbirmingham@westlandswater.org>, "Mitch Butler - Natural Resource Results" (mitchbutler@naturalresourceresults.com)" <mitchbutler@naturalresourceresults.com>, "towater@olaughlinparis.com" <towater@olaughlinparis.com>, [REDACTED] <[REDACTED]>, David Bernhardt <dbernhardt@bhfs.com>, "Ronald D. Jacobsma CPA" (rjacobsma@friantwater.org)" <rjacobsma@friantwater.org>, Jennifer Buckman <jbuckman@friantwater.org>, Stuart Somach <ssomach@somachlaw.com>, "tmberliner@duanemorris.net" <tmberliner@duanemorris.net>, John Watts <john_watts@feinstein.senate.gov>
Subject: RE: Title V -- picking up where left off

ok. thanks for being flexible everyone. I will send an email invite out shortly for tomorrow 2pm (dc time) call.

The document we can start with is something Jennifer Buckman put together that reflects last week's conference call. I realize that there were subsequent emails thereafter....

From: Steve Chedester [stevechedester@sjrecwa.net]
Sent: Monday, November 10, 2014 6:43 PM
To: Weaver, Kiel
Cc: Brent Walthall (bwalthall@kcwa.com); Birmingham, Thomas (tbirmingham@westlandswater.org); Mitch Butler - Natural Resource Results (mitchbutler@naturalresourceresults.com); towater@olaughlinparis.com; [REDACTED]; David Bernhardt; Ronald D. Jacobsma CPA (rjacobsma@friantwater.org); Jennifer T. Buckman - Friant (jbuckman@friantwater.org); Stuart L. Somach (ssomach@somachlaw.com) ; Steve Chedester; tmberliner@duanemorris.net; john_watts@feinstein.senate.gov
Subject: Re: Title V -- picking up where left off

Either time works

Steve Chedester
SJRECWA
Sent from iPhone

On Nov 10, 2014, at 2:34 PM, Weaver, Kiel <Kiel.Weaver@mail.house.gov> wrote:

All,

We made some good progress last week on getting some resolution to Title V of the pending California water bill.

However, I think there's still some confusion and, thus, the need to have a conversation.

To that end, John Watts and I would like to do a conference call Tuesday at 2pm (DC time) or Wednesday at 1pm (DC time) to figure out where we are and to take further steps toward resolution on Title V.

Tomorrow is Veterans Day, as you know. However, we can still do a conference call at 2pm DC time if we have a sizable quorum. If this doesn't work for most of you, can we try for 1pm DC time on Wednesday.

Please let me know your availability for both times so we can schedule something. When we schedule it, I will send the most recent version that the House sent to the Feinstein office.

Let me know. Thanks

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From: Tom Birmingham
Sent: Friday, November 14, 2014 1:55 PM
To: 'Weaver, Kiel'
CC: 'Nelson, Damon'; 'David Bernhardt'; jsutton@tccanal.com
Subject: TCCA Language

Kiel,

Jeff Sutton and I have been trading language all week. Attached is a document that I hope represents the final product. Jeff needs to check one issue.

Tom

From: Walthall, Brent

Sent: Friday, November 14, 2014 2:00 PM

To: Weaver, Kiel; 'Jennifer Buckman'; Tom Birmingham

CC: 'Stuart L. Somach '; john_watts@feinstein.senate.gov; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; 'David Bernhardt'; Ronald Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Berliner, Thomas M.

Subject: RE: Title V -- picking up where left off

Hi Kyle and John:

Below is what I understand to be the agreement on Section 501. The last paragraph in 501 starting "The Secretary shall...." is based on a conversation between me and John Watts and I'm not sure others have seen it. It was an issue only KCWA cared about so hopefully it doesn't step on anyone's toes.

We are very close on 502, but not yet in agreement.

Brent

Section 501

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(a) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;

(b) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion,

and as a consequence of the Department's action, Central Valley Project ~~is able to export more water than it would have exported~~ *yield is greater than it would have been* absent the Department's action, that additional ~~water~~ *yield* shall be made available to the State Water Project for delivery to State Water Project contractors.

~~Within 30 days of implementing this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project~~

The Secretary shall immediately notify the Director of the California Department of Fish and Wildlife in writing if the Secretary determines that implementation of the Biological Opinions consistent with this Act reduces environmental protection for any species covered by the opinions.

From: Weaver, Kiel [mailto:Kiel.Weaver@mail.house.gov]

Sent: Friday, November 14, 2014 11:53 AM

To: 'Jennifer Buckman'; Tom Birmingham

Cc: 'Stuart L. Somach '; john_watts@feinstein.senate.gov; Walthall, Brent; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; 'David Bernhardt'; Ronald Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Berliner, Thomas M.

Subject: RE: Title V -- picking up where left off

All,

John Watts and I are wondering where we are on the Title V language. As you recall, we needed something earlier today. Let's have a phone call at 5pm Eastern time today. Call in Number is 877-████-████ passcode is ██████ Thanks and sorry, but we need to get this done.

From: Jennifer Buckman [<mailto:jbuckman@friantwater.org>]
Sent: Tuesday, November 11, 2014 3:09 PM
To: Tom Birmingham; Weaver, Kiel
Cc: 'Stuart L. Somach'; john_watts@feinstein.senate.gov; 'Brent Walthall'; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Berliner, Thomas M.
Subject: RE: Title V -- picking up where left off
Importance: High

All, attached is the redrafted version of Title V, per our discussion this morning. Please note that I have corrected the email addresses for Jeff Sutton to use his work email as well as for Tom Berliner. Please let me know if you see any areas where I have failed to capture accurately the outcome of today's group discussion. Thanks – Jeni

Jennifer T. Buckman, Esq.
General Counsel
Friant Water Authority
916.382.4344
██████████ (cell)

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]
Sent: Tuesday, November 11, 2014 11:42 AM
To: 'Weaver, Kiel'
Cc: 'Stuart L. Somach'; john_watts@feinstein.senate.gov; 'Brent Walthall'; 'Birmingham, Thomas'; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; ██████████; 'David Bernhardt'; Ronald D. Jacobsma; Jennifer Buckman; tmberliner@duanemorris.net; 'Steve Chedester'
Subject: FW: Title V -- picking up where left off
Importance: High

Here are the changes to section 503(b) and 503(c) we discussed.

From: Stuart Somach [<mailto:ssomach@somachlaw.com>]
Sent: Tuesday, November 11, 2014 10:10 AM
To: Weaver, Kiel; john_watts@feinstein.senate.gov
Cc: Brent Walthall; Birmingham, Thomas; Mitch Butler - Natural Resource Results; towater@olaughlinparis.com; ██████████; David Bernhardt; Ronald D. Jacobsma CPA; Jennifer T. Buckman - Friant; tmberliner@duanemorris.net; Steve Chedester
Subject: Re: Title V -- picking up where left off
Importance: High

I am re-sending the redlines that I sent last week for everyone's convenience. These do **not** include the needed changes that Tom pointed out last week. I am away from my office and could not further edit from where I am.

--



Stuart L. Somach | Attorney

500 Capitol Mall, Suite 1000 | Sacramento, CA 95814
Office 916.446.7979 | **Cell** [REDACTED] | **Fax** 916.446.8199 |
ssomach@somachlaw.com
<http://www.somachlaw.com>

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From: "Weaver, Kiel" <Kiel.Weaver@mail.house.gov>
Date: Monday, November 10, 2014 at 5:35 PM
To: Steve Chedester <stevechedester@sjrecwa.net>
Cc: "Walthall, Brent" <bwalthall@kcwa.com>, Thomas Birmingham <tbirmingham@westlandswater.org>, "Mitch Butler - Natural Resource Results" (mitchbutler@naturalresourceresults.com)" <mitchbutler@naturalresourceresults.com>, "towater@olaughlinparis.com" <towater@olaughlinparis.com>, "[REDACTED]", "[REDACTED]", David Bernhardt <dbernhardt@bhfs.com>, "Ronald D. Jacobsma CPA" (rjacobsma@friantwater.org)" <rjacobsma@friantwater.org>, Jennifer Buckman <jbuckman@friantwater.org>, Stuart Somach <ssomach@somachlaw.com>, "tmbertliner@duanemorris.net" <tmbertliner@duanemorris.net>, John Watts <john_watts@feinstein.senate.gov>
Subject: RE: Title V -- picking up where left off

ok. thanks for being flexible everyone. I will send an email invite out shortly for tomorrow 2pm (dc time) call.

The document we can start with is something Jennifer Buckman put together that reflects last week's conference call. I realize that there were subsequent emails thereafter....

From: Steve Chedester [stevechedester@sjrecwa.net]
Sent: Monday, November 10, 2014 6:43 PM
To: Weaver, Kiel
Cc: Brent Walthall (bwalthall@kcwa.com); Birmingham, Thomas (tbirmingham@westlandswater.org); Mitch Butler - Natural Resource Results (mitchbutler@naturalresourceresults.com); towater@olaughlinparis.com; [REDACTED]; David Bernhardt; Ronald D. Jacobsma CPA (rjacobsma@friantwater.org); Jennifer T. Buckman - Friant (jbuckman@friantwater.org); Stuart L. Somach (ssomach@somachlaw.com) ; Steve Chedester; tmbertliner@duanemorris.net; john_watts@feinstein.senate.gov
Subject: Re: Title V -- picking up where left off

Either time works

Steve Chedester
SJRECWA
Sent from iPhone

On Nov 10, 2014, at 2:34 PM, Weaver, Kiel <Kiel.Weaver@mail.house.gov> wrote:

All,

We made some good progress last week on getting some resolution to Title V of the pending California water bill.

However, I think there's still some confusion and, thus, the need to have a conversation.

To that end, John Watts and I would like to do a conference call Tuesday at 2pm (DC time) or Wednesday at 1pm (DC time) to figure out where we are and to take further steps toward resolution on Title V.

Tomorrow is Veterans Day, as you know. However, we can still do a conference call at 2pm DC time if we have a sizable quorum. If this doesn't work for most of you, can we try for 1pm DC time on Wednesday.

Please let me know your availability for both times so we can schedule something. When we schedule it, I will send the most recent version that the House sent to the Feinstein office.

Let me know. Thanks

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From: Tom Birmingham

Sent: Monday, November 17, 2014 10:06 PM

To: 'Walthall, Brent'; 'Jennifer T. Buckman - Friant'; 'Cowin, Mark@DWR'

CC: 'John Watts'; 'Weaver, Kiel'; 'Nelson, Damon'; 'Lombardi, Kyle'; 'Butler, Jessica'; 'Petersen, Scott'; 'David L. 'Bernhardt'

Subject: FW: Title V Language

The attached language was forwarded to me by John Watts. The proposed changes are problematic for a number of reasons. First, I am not sure I understand the proposed changes to section 501. If these changes are intended to require that this legislation be implemented in a manner that is consistent with Fish and Game Code section 2081, the effect of the language would be to make operation of the CVP subject to that provision of state law. This is unacceptable.

The sentence “[i]f the application of this Act results in the consequence described in section, the Secretary shall consider whether the actions taken or imposed as a result of this Act would be consistent with Section 503” is ambiguous. What is meant by “consequence described in section?” Moreover, the sentence is a non-sequitur. It implies that in the implementation of the legislation is subject to section 503 only if it results in the “consequence described in section.” If the legislation were enacted without this sentence, would not the Secretary already be required to consider whether actions taken or imposed as a result of the act are consistent with section 503?

The last two sentences proposed to be added to section 501 could be interpreted as making implementation of this federal act subject to approval of a state agency. This is also unacceptable.

The insertion of “and state” prior to laws in section 503 also creates significant ambiguity. I understand that state water law applies to operation of the CVP, but what other state laws impose legal obligations on the Secretary? Is this language intended to be a waiver of the supremacy clause or sovereign immunity? In this context the language could establish a very dangerous precedent.

It was my understanding that Kern County Water Agency, the Friant Water Authority, and other public water agencies involved in the negotiation of Title 5 had reached an agreement on these provisions. I understand that the State of California was not involved in those discussions, but if the changes “worked out” by Kern, Friant, and DWR are accepted, is the State is going to support the legislation? If not, it is my hope that we will abide by our earlier agreement.

Tom

From: Lombardi, Kyle [<mailto:Kyle.Lombardi@mail.house.gov>]

Sent: Monday, November 17, 2014 7:39 PM

To: Watts, John (Feinstein); Weaver, Kiel; Berenter, Alexandra

Cc: Walthall, Brent; jbuckman@friantwater.org; cathy.crothers@water.ca.gov

Subject: Title V Language

Hi folks –

To follow-up on the discussion from this morning on language proposed by the CA Department of Water Resources (CDWR) to Title V, attached is a modified language that has been worked out between CDWR, Kern, and Friant. Red language are the edits that have already been made to this title, and the purple is the additional language. While Kern and CDWR would support much stronger language, we understand that is not acceptable to CVP contractors. This language, when integrated into the previous edits (CDWR was not working off the latest language when initially making their edits), it should provide acceptable protections for State Water Project contractors and further clarify the intent of this Act/Title in the event the consistency determination is revoked or challenged. We also believe this language should

avoid redirected impacts to CVP contractors. If you have specific questions on this language, Brent with Kern, Jeni with Friant, or Cathy with CDWR are the subject matter experts.

It is our hope this language can be incorporated into Title V. If we need to do a joint call again, I'm fine with that. Thanks,

Kyle

Kyle Lombardi
Legislative Director
House Majority Leader Kevin McCarthy
2421 Rayburn House Office Building
Washington, D.C. 20515

P: 202-225-2915

F: 202-225-2908

www.kevinmccarthy.house.gov

From: Cowin, Mark@DWR

Sent: Tuesday, November 18, 2014 8:46 AM

To: Tom Birmingham

CC: Walthall, Brent@kcwa.com; Jennifer T. Buckman - Friant; John Watts; Weaver, Kiel; Nelson, Damon; Lombardi, Kyle; Butler, Jessica; Petersen, Scott; David L. 'Bernhardt; Crothers, Cathy@DWR

Subject: Re: Title V Language

Tom,

DWR has participated in discussions about this language as requested by other parties to this email. Our goal was to provide alternative language that could help raise our comfort level that the SWP would be protected from possible loss of CESA coverage due to implementation of the proposed act. I understand this conflicts with your goals.

As I have told others, I cannot speak to my administration's ultimate position on the bill, regardless of the outcome of this Title V language.

I am traveling today but Cathy Crothers should be available to respond to your technical questions if that is helpful. Call me if you want to discuss this directly with me further.

Mark

On Nov 17, 2014, at 9:06 PM, Tom Birmingham <tbirmingham@westlandswater.org> wrote:

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Tom

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Sent: Monday, November 17, 2014 7:39 PM
To: Watts, John (Feinstein); Weaver, Kiel; Berenter, Alexandra
Cc: Walthall, Brent; jbuckman@friantwater.org; cathy.crothers@water.ca.gov
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It is our hope this language can be incorporated into Title V. If we need to do a joint call again, I'm fine with that. Thanks,

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Kyle Lombardi
Legislative Director
House Majority Leader Kevin McCarthy
2421 Rayburn House Office Building
Washington, D.C. 20515

P: 202-225-2915
F: 202-225-2908

www.kevinmccarthy.house.gov

From: Crothers, Cathy@DWR
Sent: Tuesday, November 18, 2014 10:06 AM
To: Tom Birmingham; Cowin, Mark@DWR
CC: Walthall, Brent@kcwa.com; Jennifer T. Buckman - Friant; John Watts; Weaver, Kiel; Nelson, Damon; Lombardi, Kyle; Butler, Jessica; Petersen, Scott; David L. 'Bernhardt
Subject: RE: Title V Language
Attachments: Title V Edits 11-17-14_cc.docx

Tom,

Attached is the draft Title V with some comments and edits to respond to your questions. The intent of the first sentence was require the Secretary to consider applying this Act in a manner that would facilitate a process whereby the CDFW could consider issuing a new Consistency Determination. For example, if feds change implementation of BiOp provisions, the Fed Fish agencies could provide supporting documentation and an amended BiOp that CDFW could use to issue a new CD to DWR. I rewrote this concept and added it to the end of this section.

I am ok with deleting the second sentence of Section 501.
Cathy

Cathy Crothers, Chief Counsel
California Department of Water Resources
1416 Ninth Street, Room 1104-4
Sacramento, CA 94236-001

Cathy.Crothers@water.ca.gov
916.653.5613 office phone
[REDACTED] cell phone

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1 **Green** – Previously revised language

2 **Purple** – Revised language

3 **TITLE V—WATER RIGHTS PROTECTIONS**

4 **SEC. 501. PROTECTIONS FOR STATE WATER PROJECT**
5 **CONTRACTORS.**

6 (a) The Secretary of the Interior (Secretary) shall ensure to the maximum extent practicable
7 that ~~if, as a result of~~ the application of this Act shall be carried out in manner that supports
8 the California Department of Fish and Wildlife consideration of consistency with
9 California Fish and Game Code section 2081. ~~if the application of this Act results in the~~
10 ~~consequence described in section, the Secretary shall consider whether the actions taken or~~
11 ~~imposed as a result of this Act would be consistent with Section 503.~~

12
13 (b) If, as a result of the application of this Act, the California Department of Fish and
14 Wildlife:

15 (1) revokes the consistency determinations pursuant to California Fish and Game Code
16 section 2080.1 that are applicable to the State Water Project;

17 (2) amends or issues one or more new consistency determinations pursuant to California
18 Fish and Game Code section 2080.1 in a manner that **directly or indirectly** results in
19 reduced water supply to the State Water Project as compared with the water supply
20 available under the Smelt Biological Opinion and the Salmonid Biological Opinion;
21 or

22 (3) requires take authorization under section 2081 for operation of the State Water
23 Project in a manner that **directly or indirectly** results in reduced water supply to the
24 State Water Project as compared with the water supply available under the Smelt
25 Biological Opinion and the Salmonid Biological Opinion,

26
27 and as a consequence of the Department's action, ~~there is an increase in~~ Central Valley Project
28 yield is greater than it would have been absent the Department's actions, that additional yield shall be
29 made available to the State Water Project for delivery to the State Water Project contractors to offset
30 losses resulting from the Department's action. ~~any such increase shall be shared equally with the State~~
31 ~~Water Project. Prior to Within 30 days of implementing this Act, the Secretary shall request written~~
32 ~~notification from the California Department of Fish and Wildlife indicating whether implementation of~~
33 ~~this Act will affect the status of consistency determinations for operation of the State Water Project.~~
34 The Secretary shall immediately notify the director of the California Department of Fish and Wildlife in
35 writing if the Secretary determines that implementation of the Biological Opinions consistent with this
36 Act reduces environmental protections for any species covered by the opinions. Actions implemented
37 under this act are deemed consistent with the biological opinions unless such notice is issued. For any
38 action triggering a notice under this subsection, the Secretary shall coordinate with the Director of the
39 California Department of Fish and Wildlife prior to implementation of that action to consider effects
40 under state law, including processes that may be undertaken that results in any reduction in protections
41 to listed species in the biological opinions that could facilitate a consideration by the California

Commented [CC1]: This sentence is intended to require the Secretary to consider applying this Act in a manner that would facilitate a process whereby the CDFW could consider issuing a new Consistency Determination. For example, if feds change implementation of BiOp provisions, the Fed Fish agencies could provide supporting documentation and an amended BiOp that CDFW could use to issue a new CD to DWR. I suggest moving and revising this sentence to the end of this section. See Below.

Commented [CC2]: I am ok deleting second sentence.

CONFIDENTIAL DRAFT LANGUAGE – DO NOT DISTRIBUTE

Department of Fish and Wildlife in possible findings of consistency with state law.]-

Commented [CC3]: Consider Moving introductory sentence to here.

SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities and to by honoring water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2. Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) ~~Any action that requires that diversions be bypassed or that involves the release of water from any CVP water storage facility taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1537, et seq.) shall be applied in a manner that is consistent with water rights priorities established by California law. [Stuart Somach to provide NCWA redraft of this language consistent with the group's discussion.]~~ Any action undertaken by the Secretary or the Secretary of Commerce pursuant to this Act to implement Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1537, et seq.), as amended, that requires that diversions from the Sacramento River or the San Joaquin River watersheds upstream of the Delta be bypassed shall be consistent with water rights priorities established by California law. Nothing in this Title alters the existing authorities provided to and obligations place upon the Federal government under the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.), as amended.

SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

(a) No provision of this Act shall be interpreted or implemented to prevent the protections provided by this Section 503. The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) as amended and other federal and state laws, shall not directly or indirectly result in the involuntary reduction of water supply or fiscal impacts to individuals or districts who receive water from either the State Water Project or from the United States under water rights settlement contracts, exchange contracts, water service contracts, water supply contracts, or repayment contracts or cause redirected adverse water supply or fiscal impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area.

(b) To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.

(c) ~~Except as provided in this Act, n~~ Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange contracts and settlement contracts prior to the allocation of any other Central Valley

Commented [CC4]: Intended to capture actions that are imposed as a result of this Act, including actions under state law that affect CDWR.

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Project ~~yield~~ water. [This language was developed in the call immediately following the large group call, per the request made to the representatives of Westlands, the Exchange Contractors, Friant and Kern.]

(d) Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing State Water Project water supply or settlement contract with the State.

SEC. 504. EFFECT ON EXISTING LAWS.

Nothing in this Act preempts ~~any State law in effect on the date of enactment of this Act~~ or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law including established water rights priorities.

SEC. 505. [TCCA PROPOSED LANGUAGE].

[This language was provided separately. Refinements to this language were worked out after the group call by the representatives of Westlands, the Exchange Contractors, Friant and Kern.]

From: Nelson, Damon
Sent: Tuesday, November 18, 2014 10:24 AM
To: Tom Birmingham; Bernhardt, David L.
Subject: Lombardi

“Again, cdwr, kern and friant all agree with the revised title v. Only tom has concerns.”

Damon Nelson
Deputy Chief of Staff & Legislative Director
Congressman Devin Nunes
Office: (202) 225-2523

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From: Tom Birmingham
Sent: Tuesday, November 18, 2014 11:36 AM
To: 'John Watts'; 'Weaver, Kiel'; 'Nelson, Damon'; 'Butler, Jessica'
CC: 'David L. 'Bernhardt'
Subject: Needed Direction
Attachments: Title V Edits 11-17-14_cc.docx

Lady and Gentlemen,

I received the following from Cathy Crothers, an attorney with the California Department of Water Resources. As I have related to each of you, from Westlands' perspective, we had an agreement with the affected parties on section 501. Therefore, I am not going to engage with Cathy on this matter unless directed by you to do so.

Tom

From: Crothers, Cathy@DWR [mailto:Cathy.Crothers@water.ca.gov]
Sent: Tuesday, November 18, 2014 9:06 AM
To: Tom Birmingham; Cowin, Mark@DWR
Cc: Walthall, Brent@kcwa.com; Jennifer T. Buckman - Friant; John Watts; Weaver, Kiel; Nelson, Damon; Lombardi, Kyle; Butler, Jessica; Petersen, Scott; David L. 'Bernhardt
Subject: RE: Title V Language

Tom,

Attached is the draft Title V with some comments and edits to respond to your questions. The intent of the first sentence was require the Secretary to consider applying this Act in a manner that would facilitate a process whereby the CDFW could consider issuing a new Consistency Determination. For example, if feds change implementation of BiOp provisions, the Fed Fish agencies could provide supporting documentation and an amended BiOp that CDFW could use to issue a new CD to DWR. I rewrote this concept and added it to the end of this section.

I am ok with deleting the second sentence of Section 501.

Cathy

Cathy Crothers, Chief Counsel
California Department of Water Resources
1416 Ninth Street, Room 1104-4
Sacramento, CA 94236-001

Cathy.Crothers@water.ca.gov
916.653.5613 office phone
916 [REDACTED] cell phone

This email is confidential and subject to confidentiality under the attorney work product or attorney client communication privileges. If you have received this email in error, please inform the sender and delete it.

From: Cowin, Mark@DWR
Sent: Tuesday, November 18, 2014 7:46 AM
To: Tom Birmingham
Cc: Walthall, Brent@kcwa.com; Jennifer T. Buckman - Friant; John Watts; Weaver, Kiel; Nelson, Damon; Lombardi, Kyle; Butler, Jessica; Petersen, Scott; David L. 'Bernhardt; Crothers, Cathy@DWR
Subject: Re: Title V Language

Tom,

DWR has participated in discussions about this language as requested by other parties to this email. Our goal was to provide alternative language that could help raise our comfort level that the SWP would be protected from possible loss of CESA coverage due to implementation of the proposed act. I understand this conflicts with your goals.

As I have told others, I cannot speak to my administration's ultimate position on the bill, regardless of the outcome of this Title V language.

I am traveling today but Cathy Crothers should be available to respond to your technical questions if that is helpful. Call me if you want to discuss this directly with me further.

Mark

On Nov 17, 2014, at 9:06 PM, Tom Birmingham <tbirmingham@westlandswater.org> wrote:

The attached language was forwarded to me by John Watts. The proposed changes are problematic for a number of reasons. First, I am not sure I understand the proposed changes to section 501. If these changes are intended to require that this legislation be implemented in a manner that is consistent with Fish and Game Code section 2081, the effect of the language would be to make operation of the CVP subject to that provision of state law. This is unacceptable.

The sentence "[i]f the application of this Act results in the consequence described in section, the Secretary shall consider whether the actions taken or imposed as a result of this Act would be consistent with Section 503" is ambiguous. What is meant by "consequence described in section?" Moreover, the sentence is a non-sequitur. It implies that in the implementation of the legislation is subject to section 503 only if it results in the "consequence described in section." If the legislation were enacted without this sentence, would not the Secretary already be required to consider whether actions taken or imposed as a result of the act are consistent with section 503?

The last two sentences proposed to be added to section 501 could be interpreted as making implementation of this federal act subject to approval of a state agency. This is also unacceptable.

The insertion of "and state" prior to laws in section 503 also creates significant ambiguity. I understand that state water law applies to operation of the CVP, but what other state laws impose legal obligations on the Secretary? Is this language intended to be a waiver of the supremacy clause or sovereign immunity? In this context the language could establish a very dangerous precedent.

It was my understanding that Kern County Water Agency, the Friant Water Authority, and other public water agencies involved in the negotiation of Title 5 had reached an agreement on these provisions. I understand that the State of California was not involved in those discussions, but if the changes "worked out" by Kern, Friant, and DWR are accepted, is the State is going to support the legislation? If not, it is my hope that we will abide by our earlier agreement.

Tom

From: Lombardi, Kyle [<mailto:Kyle.Lombardi@mail.house.gov>]
Sent: Monday, November 17, 2014 7:39 PM
To: Watts, John (Feinstein); Weaver, Kiel; Berenter, Alexandra
Cc: Walthall, Brent; jbuckman@friantwater.org; cathy.crothers@water.ca.gov
Subject: Title V Language

Hi folks –

To follow-up on the discussion from this morning on language proposed by the CA Department of Water Resources (CDWR) to Title V, attached is a modified language that has been worked out between CDWR, Kern, and Friant. Red language are the edits that have already been made to this title, and the purple is the additional language. While Kern and CDWR would support much stronger language, we understand that is not acceptable to CVP contractors. This language, when integrated into the previous edits (CDWR was not working off the latest language when initially making their edits), it should provide acceptable protections for State Water Project contractors and further clarify the intent of this Act/Title in the event the consistency determination is revoked or challenged. We also believe this language should avoid redirected impacts to CVP contractors. If you have specific questions on this language, Brent with Kern, Jeni with Friant, or Cathy with CDWR are the subject matter experts.

It is our hope this language can be incorporated into Title V. If we need to do a joint call again, I'm fine with that. Thanks,

Kyle

Kyle Lombardi
Legislative Director
House Majority Leader Kevin McCarthy
2421 Rayburn House Office Building
Washington, D.C. 20515

P: 202-225-2915

F: 202-225-2908

www.kevinmccarthy.house.gov

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1 **Green** – Previously revised language

2 **Purple** – Revised language

3 **TITLE V—WATER RIGHTS PROTECTIONS**

4 **SEC. 501. PROTECTIONS FOR STATE WATER PROJECT**
5 **CONTRACTORS.**

6 (a) The Secretary of the Interior (Secretary) shall ensure to the maximum extent practicable
7 that ~~if, as a result of~~ the application of this Act shall be carried out in manner that supports
8 the California Department of Fish and Wildlife consideration of consistency with
9 California Fish and Game Code section 2081. ~~if the application of this Act results in the~~
10 ~~consequence described in section, the Secretary shall consider whether the actions taken or~~
11 ~~imposed as a result of this Act would be consistent with Section 503.~~

12
13 (b) If, as a result of the application of this Act, the California Department of Fish and
14 Wildlife:

15 (1) revokes the consistency determinations pursuant to California Fish and Game Code
16 section 2080.1 that are applicable to the State Water Project;

17 (2) amends or issues one or more new consistency determinations pursuant to California
18 Fish and Game Code section 2080.1 in a manner that **directly or indirectly** results in
19 reduced water supply to the State Water Project as compared with the water supply
20 available under the Smelt Biological Opinion and the Salmonid Biological Opinion;
21 or

22 (3) requires take authorization under section 2081 for operation of the State Water
23 Project in a manner that **directly or indirectly** results in reduced water supply to the
24 State Water Project as compared with the water supply available under the Smelt
25 Biological Opinion and the Salmonid Biological Opinion,

26
27 and as a consequence of the Department's action, ~~there is an increase in~~ Central Valley Project
28 yield is greater than it would have been absent the Department's actions, that additional yield shall be
29 made available to the State Water Project for delivery to the State Water Project contractors to offset
30 losses resulting from the Department's action. ~~any such increase shall be shared equally with the State~~
31 ~~Water Project. Prior to Within 30 days of implementing this Act, the Secretary shall request written~~
32 ~~notification from the California Department of Fish and Wildlife indicating whether implementation of~~
33 ~~this Act will affect the status of consistency determinations for operation of the State Water Project.~~
34 The Secretary shall immediately notify the director of the California Department of Fish and Wildlife in
35 writing if the Secretary determines that implementation of the Biological Opinions consistent with this
36 Act reduces environmental protections for any species covered by the opinions. Actions implemented
37 under this act are deemed consistent with the biological opinions unless such notice is issued. For any
38 action triggering a notice under this subsection, the Secretary shall coordinate with the Director of the
39 California Department of Fish and Wildlife prior to implementation of that action to consider effects
40 under state law, including processes that may be undertaken that results in any reduction in protections
41 to listed species in the biological opinions that could facilitate a consideration by the California

Commented [CC1]: This sentence is intended to require the Secretary to consider applying this Act in a manner that would facilitate a process whereby the CDFW could consider issuing a new Consistency Determination. For example, if feds change implementation of BiOp provisions, the Fed Fish agencies could provide supporting documentation and an amended BiOp that CDFW could use to issue a new CD to DWR. I suggest moving and revising this sentence to the end of this section. See Below.

Commented [CC2]: I am ok deleting second sentence.

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Department of Fish and Wildlife in possible findings of consistency with state law.]-

Commented [CC3]: Consider Moving introductory sentence to here.

SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities and to by honoring water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2. Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) ~~Any action that requires that diversions be bypassed or that involves the release of water from any CVP water storage facility taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1537, et seq.) shall be applied in a manner that is consistent with water rights priorities established by California law. [Stuart Somach to provide NCWA redraft of this language consistent with the group's discussion.]~~ Any action undertaken by the Secretary or the Secretary of Commerce pursuant to this Act to implement Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1537, et seq.), as amended, that requires that diversions from the Sacramento River or the San Joaquin River watersheds upstream of the Delta be bypassed shall be consistent with water rights priorities established by California law. Nothing in this Title alters the existing authorities provided to and obligations place upon the Federal government under the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.), as amended.

SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

(a) No provision of this Act shall be interpreted or implemented to prevent the protections provided by this Section 503. The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) as amended and other federal and state laws, shall not directly or indirectly result in the involuntary reduction of water supply or fiscal impacts to individuals or districts who receive water from either the State Water Project or from the United States under water rights settlement contracts, exchange contracts, water service contracts, water supply contracts, or repayment contracts or cause redirected adverse water supply or fiscal impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area.

(b) To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.

(c) ~~Except as provided in this Act, n~~ Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange contracts and settlement contracts prior to the allocation of any other Central Valley

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Project ~~yield~~ water. [This language was developed in the call immediately following the large group call, per the request made to the representatives of Westlands, the Exchange Contractors, Friant and Kern.]

(d) Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing State Water Project water supply or settlement contract with the State.

SEC. 504. EFFECT ON EXISTING LAWS.

Nothing in this Act preempts ~~any State law in effect on the date of enactment of this Act~~ or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law including established water rights priorities.

SEC. 505. [TCCA PROPOSED LANGUAGE].

[This language was provided separately. Refinements to this language were worked out after the group call by the representatives of Westlands, the Exchange Contractors, Friant and Kern.]

From: Tom Birmingham
Sent: Tuesday, November 18, 2014 1:38 PM
To: 'David L. 'Bernhardt'; 'Denny Rehberg'; DCardoza@foley.com
Subject: FW: Dinner....

Dinner tonight has now been scheduled for 8:00 p.m. at Capital Grill.

From: Nelson, Damon [mailto:Damon.Nelson@mail.house.gov]
Sent: Tuesday, November 18, 2014 12:22 PM
To: Tom Birmingham
Subject: RE: Dinner....

Ok. It is 8 unless you hear otherwise.

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Tuesday, November 18, 2014 2:34 PM
To: Nelson, Damon
Subject: RE: Dinner....

Our group will include David, Denny Rehberg, and Dennis Cardoza. Please let me know if the time changes.

From: Nelson, Damon [mailto:Damon.Nelson@mail.house.gov]
Sent: Tuesday, November 18, 2014 11:23 AM
To: Tom Birmingham
Subject: Dinner....

It is you, David, and? We are changing the reservation number.

Damon Nelson
Deputy Chief of Staff & Legislative Director
Congressman Devin Nunes
Office: (202) 225-2523

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From: Denny Rehberg
Sent: Tuesday, November 18, 2014 1:39 PM
To: Tom Birmingham
CC: David L. 'Bernhardt'; DCardoza@foley.com
Subject: Re: Dinner....

Got it. Thanks

On Nov 18, 2014, at 3:38 PM, Tom Birmingham <tbirmingham@westlandswater.org> wrote:

Dinner tonight has now been scheduled for 8:00 p.m. at Capital Grill.

.....
Mercury.

Denny Rehberg
Co-Chairman
(US Congressman 2001-2013)
The Portrait Building
701 8th Street NW | Suite 650
Washington, DC | 20001
202.261.4000 office | [REDACTED] mobile
www.mercuryllc.com

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Office: (202) 225-2523

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<image001.jpg>

From: Watts, John (Feinstein)

Sent: Tuesday, November 18, 2014 3:43 PM

To: Tom Birmingham; Bernhardt, David L.

Subject: FW: 2014-11-17 Administration Analysis and Comments

Attachments: 2014-11-17 Administration Analysis and Comments.docx; 2014-11-16 InteriorComments_Title V.DOCX

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TECHNICAL DRAFTING ASSISTANCE – NOT ADMINISTRATION POLICY

Comments on Redline California Drought Legislation Received 11/7/2014 at 4:14 PM

The comments are focused on the changes/additions in the redline version of the bill, dated 10/03/2014. Comments are in addition to September 2014 comments.

Topline:

- This draft legislation includes both substantive and procedural requirements that significantly differ from what was contained in previous drafts.
- The draft legislation directs agency actions and restricts agency discretion in conducting certain activities, which has the potential to:
 - Limit the ability of the agency to use the best methods and/or science to address evolving issues by focusing on a particular approach;
 - Foster significant litigation over interpretation of numerous provisions;
 - Cause unintended consequences contrary to the intended goals of the legislation;
 - Contains provisions the Administration has previously opposed;
 - Provide benefits to specific stakeholders and interest groups to the detriment of others and/or the environment; and cause conflict and inconsistency between this draft legislation and other laws and agency regulations.
 - Effectively amend the ESA by inserting new standards in lieu of the existing jeopardy standard.
- **Limits Operational Flexibility.** Parts of the legislation are overly prescriptive and may limit the flexibility needed to maximize water supplies while adequately protecting listed species. It is possible that the prescriptive nature of the legislation could result in lowering the species baseline and thereby inhibit the ability of the agencies to meet water supply needs and recover species in the future.
- **Broader in Scope than Existing Drought.** The legislation expands the current definition of drought and includes provisions that are not temporally limited to drought.
- **Public Input Needed on New Provisions.** The legislation contains new substantive provisions of law that have not received public/stakeholder input.
- **Significantly Impacts Mission of Reclamation.** The legislation prioritizes agency-wide resources to the State of California with financial penalties that will impact Reclamation programs in the remaining western states if expedited deadlines are not met.
- **Does not Holistically Address Drought.** Legislation requires numerous studies, reports, and findings with an emphasis on new sources of surface storage without any emphasis on other potential actions such as water conservation, habitat improvements, and groundwater management that could benefit water supplies in both the short and long-term. Instead of streamlining the process, these reports will potentially have the opposite effect and require the reallocation of limited personnel resources away from substantive work on addressing impacts of the drought to complete reports.
- **Impacts to BDCP and other Actions.** Activities mandated in the draft legislation direct new and expanded agency activities without providing funding/appropriations. This will redirect agency focus and personnel resources away from other agency and Administration priorities. The Agencies will not be able to complete the Bay-Delta Conservation Plan (BDCP) and related Section 7 consultations issuance of permits, and the NEPA process on BDCP in a reasonable timeframe. Carrying out the activities in the draft legislation will also reduce agency focus on critical and evolving water management needs to address the ongoing drought.
- **Redefining Drought.** The legislation proposes to permanently redefine “drought” conditions to include all Critically Dry or Dry water years (about 13% and 21% of all years, respectively, since 1906, based on the 40-30-30 index), and, in addition, all Below Normal or wetter years that occur within two years after a Dry or Critically Dry year. Based on 1906-2014 data for the 40-30-30 index, this definition captures about 72% of all years, and defines many Above Normal and Wet years (e.g. 2011) as “drought” years for purposes of the legislation. (*Section 303(a)(1)*). The effect of this change and its subsequent changes on the scope and duration of problematic provisions identified in great detail below is significantly problematic.

TECHNICAL DRAFTING ASSISTANCE – NOT ADMINISTRATION POLICY

Comments on Redline California Drought Legislation Received 11/7/2014 at 4:14 PM

General Comments:

- **State and Federal Operations.** Many of the proposed activities would require coordination with the state in the operation of the CVP and SWP projects. Some of the proposed activities must also apply to SWP operations; otherwise the actions are not feasible and may be in conflict with state law and requirements.
- **Jeopardy vs. Negative Impact on Long Term Survival.** The draft legislation appears to change the standard as required under the ESA for agency actions. Section 7(a)(2) of the ESA explicitly requires that an agency's action is to not likely jeopardize listed species. Rather, a definition for "negative impact" is included in the bill that is similar to but drops the "recovery" element, and repeated throughout as a standard thereby effectively amending the ESA. (*Section 3(5)*).
 - If the standard in the draft legislation is followed, actions could be in violation of the ESA. Conversely, if the ESA regulatory definition is followed, actions would be in violation of the legislation if enacted into law.
- **Modification of Incidental Take for Delta Smelt.** The draft legislation does not recognize the role of an incidental take statement (ITS) and requires that the incidental take calculation be modified and calls for regular reviews. It is reworked in such a manner that it may no longer apply protections to the action agency/applicant against section 9 liability. The requirement to modify the ITS could impair the Service's ability to use the best available science. The review requirements impose a substantial workload on Service staff. (*Section 102*)
- **New Provisions for Reclamation.** The draft redline legislation includes project delivery provisions previously considered by the Congress that was opposed by the Administration in the recent Water Resources Development Act and Map 21 bills. (*Title IV, Title VI, Title VII*) The implementation of some of these provisions would be problematic for Reclamation and its existing project operations and likely force a reallocation of resources away from other critical priorities. BOR has testified in opposition to several of these provisions. Timelines for accelerated storage reviews are also unrealistic.
- **NEPA.** There are decisions called for throughout the latest version (e.g., 103(g) at p 11, lines 36 et seq; 203(c); 303(c)(1); 312(a)): which of those could not be made using the NEPA alternative arrangements either previously provided or in this new draft (e.g., 205(e)); 604(1)) – in other words, what is not possible under environmental review/permitting/approval requirements other than NEPA.

SECTION-BY-SECTION ANALYSIS

Section 2: Findings

- To be consistent with USFWS listing determination, delta smelt should be all lowercase throughout document.
- **Section 2(14)**: the RPA actions limit the rate of export (CFS), which in turn affect the amount (acre feet) exported. The RPA actions do not restrict the amount directly (i.e. acre feet that is allowed to be pumped).
- **Section 2(16)(C)**: the studies referred to in this subsection are not known to the Administration. We disagree with the proposition that water exports have not demonstrated any significant adverse effect on fish survival.
- **Section 2(17)** is misleading. (1) It describes delta smelt “take” at the pumps during 2009-2014 when in fact the numbers presented are “salvage” during those years. Salvage is orders of magnitude smaller than actual take of smelt, because much of the entrainment and pre-salvage mortality that occurs goes unobserved. As such, the bullet leads to a misleading comparison of smelt take by the water projects vs smelt take by Interagency Ecological Program monitoring studies that indicates monitoring results in more take than project operations. In fact, smelt take by the projects dwarfs research take. (2) The item does not make clear that Delta Smelt concerns were only rarely a limiting factor on water operations during 2009-2014; hence relaxing smelt protections would not have allowed substantially higher water deliveries through that 5 year period.

Section 3: Definitions

- **Section 3(2)**: Definition of “Exporting Pump Rates” is different than the definition of export in other documents such as SWCB’s D-1641 and the COA.
- **Section 3(5)**: Definition of “Negative Impact on the Long-Term Survival. This is NOT the definition of “to jeopardize” as only survival. Unclear intention. Is this “impact” intended to represent a standard less than restrictive than the ESA jeopardy standard? Importantly, which would govern – the regulatory definition of “to jeopardize” or this new definition?

Title I:

- **Section 102(a)**: the language indicates that every 5 years USFWS will be required to change the calculation method even if no modification is warranted by best available science. Method should only be changed if it can improve operational flexibility while protecting fish. There should be some recognition that agency can determine a change not necessary.
- **Section 102(b)**: definition of Modified Incidental Take Level does not relate to the purpose of an Incidental Take. An ITS provides section 9 coverage for the action agency/applicant and to predict the amount of take anticipated from the action under consultation.
- **Section 102(b)(1)**: No definition for “normalized.”
- **Section 103(a)**: References to the “Secretary” throughout this section should actually be the “Director.” Otherwise, this implies that both Reclamation and USFWS would be responsible for these activities. References to judicial review standard under the APA, which seems unnecessary.
- **Section 103(a)** requires “continual” re-evaluation of the RPA. This is not practical or necessary from the perspective of ESA implementation. RPAs are developed at the time a jeopardy determination is made. And while RPAs can require real time, continuous measures to both provide protection for listed species and flexibility for water operations, the RPAs themselves cannot be continuously refined or amended. To amend or refine an RPA would require a thorough effects analysis and would trigger reconsultation on the part of the Bureau of Reclamation and the conservation agencies. Adaptive management of the project can occur by using a deliberative adaptive management process in the Section 7 consultation, and if that is what is intended the language would benefit from clarification. Striking “continuous” would be a solution.
- **Section 103(b)(1)(A)** requires the Service to use the most “accurate” survey methods. Accuracy does not imply precision. What is needed are survey methods that reliably measure changes in trends. Using “most appropriate” would be better terminology, because it recognizes that selection of survey methods needs to take into account a suite of goals, including accuracy, precision, reliability, accommodation of multiple species

TECHNICAL DRAFTING ASSISTANCE – NOT ADMINISTRATION POLICY

Comments on Redline California Drought Legislation Received 11/7/2014 at 4:14 PM

objectives, take of imperiled species, and practical costs of implementation. Reasonable bounds for cost and fish protection should be described. This could be a large increase in cost to CVP contractors.

- **Section 103(b)(1)(B):** Unless this is intended to override the ESA, they also have to operate in such a manner that does not jeopardize listed species. “Long term” would also suggest we could increase exports with increased short term losses of smelt. But for a species that has a life cycle of one year, how does one determine a significant long term effect on the species survival?
- **Section 103(b)(2):** Timeframe should not be capped in order to incorporate the best available data. Monitoring efforts need reasonable bounds. (Appropriate, significant). This would also increase cost to the CVP contractors.
- **Section 103(d):** This could result in large take for the sampling efforts, which would provide very little value. This would require continually added new sampling methods every five years regardless if they are needed. This would also increase cost to the CVP contractors.
- **Section 103(e)(2)** is not implementable as written, as it would require a “jeopardy analysis” prior to any real-time operations decision that sets OMR more positive than -5000 cfs. Factors constantly change in the dynamic Bay-Delta environment. Assessing the “avoid a significant negative impact on long-term survival” would require repeated and continuous assessment that, along with the reporting requirement, would result in a huge unfunded workload and considerable litigation vulnerability. Section 309 sets forth a permanent requirement to operate to -7500 cfs OMR during early storms. This requirement could be inconsistent with the best available science pertaining to reducing adverse effects on delta smelt, especially a major entrainment event that could be associated with early storms. It also would delay implementation of the RPA in certain years, and could reduce overall seasonal water deliveries by creating entrainment problems for smelt and other species that could readily have been avoided. The implementation measures described in this section are inconsistent with implementation of the ESA.
- **Section 103(e)(3)** should include “fish and water quality monitoring. Section 103(e)(3)(C): these decisions are made weekly or more frequently and would be difficult to make in real time.
- **Section 103(f):** Significant change (“negative impact on long-term survival”)- directly contradicts with the ESA with regard to jeopardy, take, and reinitiation. The intent of this language remains unclear as to how an MOU will change implementation of the BiOp. If the intent is to change decision making under the RPA to Reclamation it needs to be explicit, particularly after the sections above which dictate how the FWS is to make the decisions. Suggest adding a time frame, “within XX days of enactment of this law...”
- **Section 103(g):** 90 days may not be sufficient time to evaluate new science to make a change. Suggest change to language to review and revise as necessary. Revisions may not be warranted, though language requires revisions. Unclear what revision to method used to calculate reverse flow in Old and Middle Rivers is attempting to accomplish. Is this to adopt an index or change the current index?

Title II:

- **Section 202(a):** This indicates a joint venture, but the design and public review elements are led by the “Assistant Administrator,” which doesn’t leave Reclamation with much say in how this would be implemented. Appears to be another study request without reasonable bounds for cost or fish protection. Barging, at least with respect to Central Valley steelhead, has previously been evaluated and rejected as ineffective and prohibitively expensive.
- **Section 202(a)(5):** “if survival rates are significantly higher for barged fish as compared to other outmigrating smolts,” This is unclear. Suggest defining significant and survival. Is survival Past Chipps Island or escapement (returning adults)? The pilot project should define these terms.
- **Section 202(b):** Suggested actions: “habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed” could increase costs to the CVP contractors.
- **Section 202(c):** What occurs if recommendations are reviewed and accepted? This would conflict with the adaptive management processes described later.

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- **Section 203:** the requirements of this section conflict in several respects with requirements of Title III. It would also make permanent law relating to the application of the Endangered Species Act to the CVP, based on a biological opinion that is slated for revision.
- **Section 203(d):** the concept of “in the aggregate” is not clear, and treating multiple listed species as a single species for purposes of management is not biologically or legally defensible.
- **Section 203(g):** same comment as 203(d). In Section 203(g)(4), this approach would maintain very low through Delta survival rates that currently exist for salmonids (1-10%) on San Joaquin side. This is not sustainable from a species viability standpoint and would preclude recovery.
- **Section 203(h)** Imposing requirements for formal findings of jeopardy “in each instance” will impede the flexibility needed for efficient management. Application of these operating parameters occurs through a team that monitors conditions in-season on a daily and weekly basis, making adjustments as conditions warrant.
- **Section 204(g):** Administration strongly opposes the NEPA waivers in this section. We support the NEPA savings clause in Section (h).
- **Section 204:** The pilot study plan should be peer reviewed to ensure the methods, processes and data being collected meet the objectives of the study. Process would need to go through NEPA/ESA and state processes.
- **Section 204(h)** Unclear why DOI is lead, should be Commerce. Unclear why g and h are needed.

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Title III:

This drought legislation, which includes an amendment to the purposes of the CVPIA, would compromise the intent of the legislation and significantly preclude our ability to effectively manage trust resources within the 19 CVPIA refuges. The Central Valley is a key area within the Pacific Flyway, hosting high concentrations of migratory birds through the winter, with an estimated 10-12 million waterfowl passing through the Central Valley annually. When the Central Valley Project Improvement Act (CVPIA) was signed in 1992, Congress provided a clear mandate for the Department of the Interior to provide “firm water supplies of suitable quality to maintain and improve wetland habitat” to 19 different federal, state, and privately managed wetland areas in California’s Central Valley by 2002. In addition to providing critical wintering grounds for migratory birds, these wetland areas benefit over 550 species of animals and plants, including 47 species listed under the Endangered Species Act. These wetland areas represent only a fraction of the wetlands historically found in the Central valley, and need to be very intensively managed, with CVPIA water allocations throughout the year.

- **Section 303(a)(1):** Language that stipulates “shall provide maximum amount of supply practicable” can limit Reclamation’s discretion to make operational decisions (ex: carryover storage or management of salinity in the delta). Unclear where values “6.5 and 7.8” originate and how this provision incorporate state laws. Language should also be explicit if intent is to change CVPIA and exclude refuges.
- **Section 303(a)** removes CVPIA refuges from the ability to receive additional water. This is problematic; language drafted in Section 308 suggests that CVPIA refuges will have to rely on ground water to receive Level 2 allocations and Section 303(a) and Section 303(2)(B) specifically prohibits the ability of acquiring Level 4 water for CVPIA refuges. This would result in a 50 percent reduction of wetland acres managed by CVPIA refuges. Given the legislation’s definition of drought periods would result in frequent enactment of this legislation, we are very concerned the reduced acreage of wetlands available to migratory birds and federally listed species would significantly affect the ability of CVPIA refuges to conserve these resources. Furthermore, Section 303 (a)(2) also includes the Klamath Project which would preclude the ability of units of the National Wildlife Refuge System within the Klamath Basin from acquiring water which would further degrade the availability of wetland habitat for migratory birds and other trust resources. These actions, if enacted, would degrade a significant portion of managed wetlands for migratory birds utilizing these wetlands as stop-over and wintering areas within the Pacific Flyway.
- **Section 303(b)(2)(B):** should include “applicable federal and state” laws.
- **Section 303(b)(3):** should include qualifier of “or minimum needed to maintain health and safety.”
- **Section 303(b)(4):** Only directs state law, does not take into account NEPA and ESA.
- **Section 303(c):** Unclear how environmental compliance processes would be completed in this section.
- **Section 303(f):** A drought plan may not be needed for all critical years until we have two above normal years. .
- **Section 304:** The benefits to water supply may be marginal here at best and this is excessive to include this in the language for every critical year until we have two above normal years. This says to maximize the peak flood tide period, but this is also a period that fishery agencies have asked us to avoid. Limitations on operations during the daytime due to fishery concerns may constrain any water quality/supply benefits and cause excessive labor requirements and wear on the facilities. To be effective there needs to be more clarification on what the diurnal operation is to obtain a reasonable operation. Best science should be used, instead of specifying a specific group.
- **Section 304(a)(5):** Timing of May 15, 2015 would overlap with the preparation of environmental documents and current year drought documents.
- **Section 305:** This section must also apply to SWP operations otherwise the operation is not feasible because of the coordinated operations between the SWP and CVP both agencies must be in agreement on the operational objectives. DWR may have concerns if DFW does not agree with the fishery protective actions of FWS and NMFS. This comment applies to CVP operations under OMR, E/I, outflow, or I/E. Section 305(2) may have negative impact to fish because it locks in a calculation.
- **Section 308(5):** To implement this action Reclamation would need the cooperation of DFW and DWR.

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- **Recommend strike out language in Section 308 (B) be included,** “make available to individuals or districts who receive water from the United States under water rights settlement contracts, exchange contracts, water service or repayment contracts the additional water obtained from the activities carried out under subparagraph (A);”
- **Section 308(1)** implies that the reliable source of water for the 19 CVPIA will now be removed and distributed amongst agricultural, municipal, and industrial contractors. The section also implies the Restoration Fund will no longer be used as a source of funding to meet the purposes of managing the 19 CVPIA refuges and replaces the potential funding with unnamed and unknown funding mechanisms.
- **Section 309(a)(2):** NOAA evaluations show that take of salmon increased significantly exactly when -5000 OMR was attempted last Spring.
- **Section 309(a)(3):** Language should specify what it is being compared to. This action also has applied March-June of each year at 5000 cfs.
- **Section 309(a)(6):** Recommend deleting this section. Subjective language. Carryover water supply is much less than one year ago.
- **Section 309(a)(6)(b):** Need to measure biological affects and apply adaptive management as stated in section 203(b)(3)(h) and 203(b)(3)(i) of this bill.
- **Section 309(b) and (d):** Not using jeopardy standard as defined in ESA. Provisions in conflict with statute. With respect to 309(b), the directive to operate south delta pumping in early spring at up to -7500 OMR is orders of magnitude greater than current requirements.
- **Section 309(e)(5):** Needs further definition as “accounts” could be at different levels of funding. Language could also be inconsistent with US Treasury regulations. Language regarding “take any action” is broad and does not seem appropriate.
- **Section 309(f):** Reclamation would need DWR cooperation to implement.
- **Section 309(g)(1)(B):** Does not provide for any limitations in actions for operating criteria. Section 309(g)(2)-action agency supposed to avoid jeopardy under emergency consultation.
- **Section 311** (pertaining to additional emergency consultation) is inconsistent with the ESA and other applicable legal requirements, as it requires no mitigation. Restating previous concerns about the duration/effect of this provision due redefinition of drought.
- **Section 311:** *Warren Act Contracts/Additional Warren Act Contracts.* Though no text was contained in the draft, Reclamation has concerns with previous iterations of draft legislation involving these issues.
- **Section 312:** Section requires the Secretary to enter into contracts when it is determined there is excess capacity. This section will only add to the difficulty of operating New Melones and the over allocated water supply. This is also inconsistent with current policy of not allowing carryover storage in New Melones.

Title IV:

- **Section 402(c)(3) and Section 402(c)(4):** Language should be struck from the bill. Section contains fines and arbitrary deadlines, which the Administration has consistently opposed as bad policy.
- **Section 403(b):** Language does not take into account the necessary funding required to construct a project.

Title V:

Reclamation is fully regulated by the California State Water Resources Control Board and must comply with all provisions of its state-issued CVP water rights permits and licenses, as well as with provisions of the California Water Code and State Water Board regulations. Reclamation must annually account for and report to the State Water Board the details of its diversions and deliveries conducted pursuant to such permits and licenses, consistent with section 8 of the Reclamation Act of 1902. This includes the protection of senior water right holders as recognized under California state water law. It is unclear why a federal law beyond section 8 of the 1902 Act is needed to protect water rights. **(See attached redline/comments from DOI)**

Title VI: Miscellaneous

- **Section 602(a):** The Secretary should be allowed to appoint a person from Reclamation and a person from the Service to the Advisory Board under 602(h)(2)(B). Otherwise it will either be the Service (who doesn't control

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funds) or Reclamation (who wasn't delegated responsibility for biological decisions). Or a third party with neither resource.

- There is some risk between "Duties" under (h)(8) and "Administration" under (h)(9) that the Secretary end up responsible for producing reports with an advisory committee that doesn't agree on the content of the report. We can have governance structures that accommodate dissenting opinions, but it will be an issue and it's not clear what happens to the Secretary if the Board does or can't produce a report. The solution would be to make the report the responsibility of the Chair. If Reclamation's writing the report, at least we're only writing for one person.
 - The Advisory Board lacks representation by the State and tribes.
 - Unclear who would be responsible for reporting requirements given that it is a stakeholder group.
- **Section 602(H)(2)(A)** does not include a member from the California Department of Fish and Wildlife, Grasslands Resource Conservation District who also are responsible for managing the 19 CVPIA refuges. In addition, there is no membership identified for the Service or the Department of Fish and Wildlife to represent Fisheries interest. Only 2 of the 15 members of the Advisory Board would represent conservation interests.
- **Section 603** is a major change in the way b(2) water is implemented. This section appears to direct accounting of water managed under Section 3406(b)(2) of the CVPIA and as such would remove the Department's discretion in managing the 800 TAF of CVPIA 3406(b)(2) yield. This loss of discretion would limit the flexibility of Reclamation when meeting needs of anadromous fish upstream and force the Secretary to exceed the 800 TAF of CVP yield dedicated to (b)(2) or forego compliance with the State WQCP or ESA. Identical language was included in the House bill.
- **Section 604:** The requirement was further modified in PL 108-361 and there may be conflicts unless it specifically excludes the modifications. Section also contains fines and arbitrary deadlines, which the Administration has consistently opposed as bad policy.
- **Section 604(2)(B):** Provision requiring feasibility study is unclear since text authorizes implementation.
- **Section 605** (pertaining to naturally vs artificially spawned fish) does not directly address Service authorities as NMFS (and California DFW) is responsible for making determinations for anadromous fish in California's Central Valley under the ESA (and for CDFW, the California ESA). The Service is concerned about the directive in this section as it sets a problematic precedent. NMFS determinations regarding anadromous fish management in California are science based. The language in the draft bill would override those science-based determinations and is inconsistent with the requirements of the ESA.
- **Section 606** amends the purposes of the CVPIA to make replacement of water dedicated to fish and wildlife purposes and facilitating transfers purposes of the CVPIA. It is not clear what practical effect these amendments would have. It could be argued that these new purposes are redundant and potentially contradictory to the existing purposes. There are existing subsections of the CVPIA that contribute to these purposes. Section 606(g) presumes that water volume is always available at a reasonable cost.
- **Section 606 is confusing.** Does this require the acquisition of 800 kaf for water contractors? The amended language suggests the fish and wildlife mandates are eliminated. Section 308 describes the use of ground water to replace existing water sources to the 19 CVPIA refuges. Since the enactment of the CVPIA, the BOR and managers of the 19 CVPIA refuges have worked diligently to diversify water sources available to the 19 CVPIA refuges. Ground water has been one of the sources used to diversify water supply, but water quality concerns and the reliability of ground water levels has precluded this from becoming the primary source of water to refuges. Furthermore, the amount of ground water pumping, declining ground water levels, and land subsidence issues in areas of groundwater depletion suggests this is not viable long term solution for replacement of surface water delivered to the refuges. Furthermore, this amendment would permanently modify the purpose of the CVPIA irrespective of whether a Drought is declared and would ultimately result in the significant degradation of fish and wildlife habitat and impair our ability to conserve trust resources.
- **Section 607(1)** modifies the definition of 'anadromous fish' in Section 3403 of the CVPIA in a way that is potentially redundant and confusing (limiting the term to native salmon, steelhead and sturgeon that were present as of October 30, 1992 is redundant as all salmon, steelhead and sturgeon that are native occupied the system in 1992), and would likely have little effect on implementation of the CVPIA, other than to require

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substantial time and resources to interpret the amendment and modify more than 20 years of foundational documents to comply with the amended definition.

- **Section 607(4)** adds a definition of ‘reasonable flows’ to the list of definitions in Section 3403 of the CVPIA, but ‘reasonable flows’ does not appear elsewhere in the CVPIA.

Title VII

- Provisions under this title place a very large burden on Reclamation, especially as it applies to non-reclamation lands or facilities. This would create additional workload for BOR and commit Reclamation to these activities without resources to effectively support these actions. This title contains fines and arbitrary deadlines, which the Administration has consistently opposed as bad policy.
- **Section 701(c)**: provides for unrealistic timeframes for regulatory streamlining. Please See Reclamation’s testimony on H.R. 3980: <http://www.usbr.gov/newsroom/testimony/detail.cfm?RecordID=2521>
- **Section 702**: Please see Reclamation’s testimony on H.R. 3981: <http://www.usbr.gov/newsroom/testimony/detail.cfm?RecordID=2521>
- **Section 703**: Timeframe and caps unrealistic.
- **Section 703(a)(2)(B)**: The scope of this provision is problematic as it could apply to NEPA 703(a)(2)(A) as well as other bedrock environmental laws, including ESA, CWA, etc.
- **Section 703(c)**: Would costs be considered construction costs and subject to the cost allocation? Unclear as to where funds would be received and if non-federal funds are required.
- **Section 703(d)**: Would this apply to storage projects identified in 3408(j) plan that are not already underway?
- **Section 703(e)**: Reports to Congress are in addition to existing reports and would take substantial resources to complete. This would potentially require reallocating efforts from substantive work that could address water supply issues during the drought.
- **Section 703(f)(2)(A)**: Timeline of 60 days may not be realistic for larger document.
- **Section 703(g)(5)(B(i))**: recommend striking out penalty language
- **Section 704**: Administration is previously on the record opposing similar [provisions in WRRDA and MAP-21. Does this section apply only to CA or is it broader?
- **Section. 705**: Administration opposes because this language would preclude the Forest Service and the Bureau of Land Management from protecting the public interest by preventing these agencies from assuring that water rights are tied to the activity for which they were developed, as a condition of a land use authorization, such as a ski area permit or livestock water development, thereby preventing the transfer of associated water rights to a succeeding permit holder. This is a deviation from longstanding Administration policy that has been to require federal ownership of water rights associated with those activities.
 - The provision is a revised version of the Water Rights Protection Act (H.R. 3189). White House Statement of Administration Policy can be found here: http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr3189r_20140312.pdf
- **Section 705 (a)** of the draft language would preclude our ability to enter into new conservation easements with willing landowners and reduce our ability to adapt to a changing climate. Currently, the Service does not purchase water rights when acquiring conservation easements, but there is language within the easement that precludes the water rights from being transferred. This easement language is included to ensure the land will be managed for trust resources; the transfer of water rights would preclude the ability of the Service and the California Department of Fish and Wildlife to adapt to changing climate conditions and create conservation areas for trust resources as habitat needs change.

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Title V:

- **Section 501(a):** Name of DWF from “Fish and Game” to “Fish and Wildlife.”
- **Section 501(c):** CVP Project “yield” should be changed to Project “deliveries.” This section will further burden south of delta contractors with the effects of this bill and impede the Secretary’s ability to make deliveries pursuant to south of delta contract obligations.
- **Section 502:** Reclamation already respects properly vested area of origin rights pursuant to California water law and section 8 of the 1902 Reclamation Act. This provision appears to attempt to place inchoate area of origin claims ahead of the CVP to avoid shortages permissible and agreed to by the parties under contract provisions, contrary to California water law and *Tehama-Colusa Canal Authority v. U.S. Department of the Interior*, 721 F.3d 1086 (9th Cir. 2013). The provision would require Reclamation to try to harmonize hopelessly conflicting laws – state water law and section 8 of the 1902 Act with this federalized water law. It would presumably direct additional shortage impacts to south of delta contractors and impede the Secretary’s ability to make deliveries pursuant to south of delta contractual obligations

SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

- (a) The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) as amended and other federal laws, shall not result in the involuntary reduction of water supply to individuals or districts who receive water from the State Water Project or from the United States under water rights settlement contracts, exchange contracts, water service or repayment contracts..
- (b) To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.
- (c) Except as provided in this Act, nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange contracts and settlement contracts prior to allocation of Central Valley Project yield.

SEC. 504. EFFECT ON STATE LAWS.

Nothing in this Act or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law including established water rights priorities.

SEC. 505. SACRAMENTO RIVER WATERSHED WATER SERVICE CONTRACTORS.

(a) In General.--Subject to subsection (b) and the absolute priority of the Sacramento River Settlement Contractors to Sacramento River supplies over Central Valley Project diversions and deliveries to other contractors, the Secretary is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

Commented [A1]: This provision appears to put the Secretary in the untenable and precarious position of being responsible for maintaining deliveries and managing shortages for a non-federal, wholly state owned and operated water project, presumably to the detriment of the Secretary’s own CVP south of delta contractors and contract delivery obligations. This provision appears to work with 502 to improperly give a priority to inchoate area of origin claims, contrary to state water law.

Commented [A2]: This must be just Table A water supplies

Commented [A3]: Unclear if provision allows for the costs of this entire Act as non-reimbursable? Needs to be more narrowly described.

Commented [A4]: Was this “or” intended to be stricken?

Commented [A5]:

This provision is in direct conflict with 502 and 503. It certainly does modify how Reclamation would operate under State law and Section 8 of the 1902 Reclamation Act. This bill would impede Reclamation’s ability to exercise its water rights for north of delta storage and south of delta deliveries.

Commented [A6]: This is too broad and needs to just reflect State water rights law. Otherwise, it could be read that Reclamation must comply with CESA and CEQA for the storage projects and any other projects identified in the Act.

Commented [A7]: This provision appears to attempt to legislatively adjudicate area of origin water right claims by assigning priority to inchoate area of origin claims, contrary to state law, as well as to legislatively adjudicate Sacramento River water right claims contrary to the settlement reached in the Sacramento River Settlement contracts.

Commented [A8]: Sacramento River Settlement Contractors and water service contractors do not have the right to prevent Reclamation from diverting water to storage when unappropriated water is available over and above the demands of properly established water rights. Nor do they have the right to prevent the export of such previously stored water to south of delta contractors. This provision appears to try to create such a right out of inchoate water rights claims, contrary to state water law.

Commented [A9]: This allocation impedes the Secretary’s ability to determine allocations necessary to protect municipal and industrial supplies to homes, businesses, and industries and to potentially protect public health and safety. This allocation appears to not take into account the fact that protection of supplies for domestic, business, commercial, and industrial activities is entirely dependent upon the Secretary’s ability to reallocate water from irrigation deliveries to M&I as the total CVP supply decreases. This provision does not disclose what the side-by-side M&I allocation would be as a result. Such an allocation should analyze and disclose impacts, including impacts to CVP M&I users. Section (b) is no remedy to this situation. This provision functions to remove Reclamation’s discretion regarding how it may allow water to be beneficially used under its water right permits for meeting its contractual commitments and for coordinating with the Governor during drought emergencies, and as a practical matter functions as a congressionally mandated state water right permit term.

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(1) Not less than 100% of their contract quantities in a "Wet" year.

(2) Not less than 100% of their contract quantities in an "Above Normal" year.

(3) Not less than 100% of their contract quantities in a "Below Normal" year.

(4) Not less than 75% of their contract quantities in a "Dry" year.

(5) Not less than 50% of their contract quantities in a "Critically Dry" year.

Commented [A10]: Unless constrained by hydrology or ESA?

(b) Protection of Municipal and Industrial Supplies.--Nothing in subsection (a) shall be deemed to: (i) modify any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary; (ii) affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies; (iii) affect or limit the authority of the Secretary to implement municipal and industrial water shortage policies; or (iv) affect allocations to Central Valley Project municipal and industrial contractors pursuant to such policies. Neither subsection (a) nor the Secretary's implementation of subsection (a) shall constrain, govern or affect, directly or indirectly, the operations of the Central Valley Project's American River Division or any deliveries from that Division, its units or its facilities.

Commented [A11]: But it does impede the Secretary's discretion to allocate water under the terms and conditions of the CVP water service contracts with a view toward protecting public health and safety and for protecting municipal supplies for homes, businesses, and industries.

(c) Definitions.--In this section:

(1) The term "existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed" means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation.

(2) The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40-30-30) Index.

Commented [A12]: If the implementation of the above irrigation allocation were to reduce flows available at the Delta from Shasta Reservoir, this provision could impede the ability for Reclamation to meet required water quality control standards pursuant to its CVP water right permits, potentially causing water right permit violations.

From: Watts, John (Feinstein)

Sent: Tuesday, November 18, 2014 5:01 PM

To: Weaver, Kiel; John Bezdek (John_Bezdek@ios.doi.gov)

CC: 'Stuart L. Somach '; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; 'David Bernhardt'; Ronald Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Berliner, Thomas M.; Walthall, Brent; Tom Birmingham; 'Jennifer Buckman'; Yeung, Felix (Feinstein)

Subject: Call with Interior at 11 am PST tomorrow to discuss Title V draft language

Hi all.

John Bezdek of Interior is available for a call at 11am PST / 2pm EST tomorrow (Wednesday) to discuss the draft Title V language.

Please use the following call-in information:

[Local: \(202\) 228-0808](tel:(202)228-0808)

[Toll Free: \(855\) 428-0808](tel:(855)428-0808)

Conference ID: 9656738

Look forward to talking with you tomorrow.

Best,

John

From: Jason Peltier

Sent: Tuesday, November 18, 2014 5:13 PM

To: T Birmingham (tbirmingham@westlandswater.org); Dennis Cardoza; 'Alan Elias'; 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; 'Catherine Karen'; 'Cheryl Faunce'; 'Dan Pope'; 'Darlene Knauf'; 'David Bernhardt'; 'Doug Subers'; 'Ed Manning'; 'Erick Mullen'; 'Gayle Holman'; 'Jason Peltier'; 'Jim Watson'; 'Joe Findaro'; 'Mike Burns'; 'Sheila Greene'; 'Susan Ramos'

Subject: Sorry, here is the full Bee article...

Talks on drought bill underway on Capitol Hill

By Michael Doyle and Mark Grossi

McClatchy Washington Bureau November 18, 2014

2014-11-18T22:56:37Z

By Michael Doyle and Mark Grossi McClatchy_Newspapers

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Rancher Jon Pedotti walks on the cracked remains of a parched lake bed on his ranch located along San Simeon Creek in the Santa Lucia Mountain foothills of Cambria, Calif.

AL SEIB — Los Angeles Times/MCT

WASHINGTON — California's water future is boiling below the surface this week.

Only the chosen few have a clue about details. Bill documents, currently about 50 pages, are stamped “confidential draft language, do not distribute.” Capitol Hill doors are shut, congressional timetables are opaque and negotiators are strictly mum.

“We’ve taken our vow of secrecy,” Rep. David Valadao, R-Calif., said Tuesday.

The coming days, though, could be crucial.

House Republicans and Democratic Sen. Dianne Feinstein of California and their respective staff members have been amicably swapping proposed language and coming ever-closer to agreement. On Thursday, California’s GOP House members received a detailed briefing at their weekly lunch.

In a potentially telling move, Westlands Water District General Manager Tom Birmingham arrived in Washington this week. The water-hungry Westlands district stands to be a big winner in the legislation, and Birmingham’s presence enables him to weigh in, and possibly sign-off, more quickly.

“We’ve been talking about this legislation for months,” Birmingham said Tuesday.

Like most other farm contractors on the federal Central Valley Project, the Rhode Island-sized Westlands Water District was left with a zero allocation of Northern California river water. Farm leaders challenged the way state and federal officials divided up the little water that was available in this intense drought.

Responding to farmer unrest, the GOP-controlled House passed a far-reaching bill in February. Drawing largely on a bill previously introduced by Rep. Devin Nunes, R-Calif., it rolled back a landmark 1992 law that directed more water to protect the Sacramento-San Joaquin Delta. The bill also removed wild-and-scenic protections from a half mile of the Merced River and authorized new water storage projects, among other provisions.

The Senate countered in May with a slimmed-down bill passed by unanimous consent, also without a committee hearing.

Democrats who voted against the 68-page House bill, and whose congressional districts span part of the 1,100 square-mile delta, have complained they have been shut out of the subsequent negotiations. Some have seen scraps of language, such as a draft that cited the “significant public interest” and “urgency” over completing water storage project feasibility studies.

One draft version was 48 pages; by the time it’s put into formal legislative language, the final bill could be upwards of 60 pages or more.

Environmentalists, fishing and wildlife advocates also want a public hearing on any drought legislation. They say they hear rumors of a bill that ignores environmental law to get more Northern California water for Westlands, a 600,000-acre district based mainly in Fresno County.

Jerry Cadagan, longtime water activist, said many groups do not want such a bill to pass quietly through the Senate.

“If there’s no opposition, wham! It could go through,” he said. “That’s what we fear.”

Seven groups have written their concerns and opposition to Feinstein. The groups include the National Resources Defense Council, Audubon California and Ducks Unlimited.

“With decades of experience, Sen. Feinstein knows the importance of being inclusive on controversial and complex pieces of legislation that impact not only the state of California, but other Western states,” environmental activist Patricia Schifferle said Tuesday.

Feinstein’s spokesman, Tom Mentzer, said Tuesday only that “draft language continues to be negotiated between House and Senate offices and nothing is final.” Feinstein’s California colleague, Democratic Sen. Barbara Boxer, who chairs the Environment and Public Works Committee, has yielded leadership on the water issue to Feinstein.

Republicans add that the House Democrats who represent the Delta and Northern California are never going to vote for the final bill anyway, so it makes no political sense to let them into the room where the deals are cut. One of the few Democrats besides Feinstein who’s privy to details is comfortable with this calculation.

“I’d like to see if we can get an agreement by the end of this week,” Rep. Jim Costa of California, one of the few Democrats to vote for the House bill, said Tuesday. “If we’re successful, then we can share the language with others.”

The one-sided secrecy is also a kind of mirror image of what happened in 1992, when Democrats stiff-armed Republicans in writing the environmentally oriented Central Valley Project Improvement Act. Republican and farmer anger over the 1992 CVPIA contributed to years of litigation, restlessness and, ultimately, backlash.

Read more here: http://www.mcclatchydc.com/2014/11/18/247275_talks-on-drought-bill-underway.html?rh=1#storylink=cpy

From: Tom Birmingham
Sent: Wednesday, November 19, 2014 7:00 AM
To: David L. Bernhardt
CC: Kyle Lombardi
Subject: Fwd: Conference Call - Tomorrow 9AM PST

David,
Please join this call if you are available.
Tom

Sent from my iPhone

Begin forwarded message:

From: "Lombardi, Kyle" <Kyle.Lombardi@mail.house.gov>
Date: November 18, 2014 at 7:44:48 PM EST
To: Tom Birmingham <tbirmingham@westlandswater.org>, "Walthall, Brent" <bwalthall@kcwa.com>, "Cowin, Mark@DWR" <Mark.Cowin@water.ca.gov>, "Crothers, Cathy@DWR" <Cathy.Crothers@water.ca.gov>, "Weaver, Kiel" <Kiel.Weaver@mail.house.gov>, "Watts, John (Feinstein)" (John_Watts@feinstein.senate.gov)" <John_Watts@feinstein.senate.gov>, "jbuckman@friantwater.org" <jbuckman@friantwater.org>
Subject: Conference Call - Tomorrow 9AM PST

Hi all –

I would like to setup a conference call tomorrow at 9AM California time to specifically discuss the recently proposed revisions to Title V (attached) submitted by CDWR. To avoid confusion, this call is **different** than the one recently proposed by John Watts with some of you and Interior. The purpose of this call is to work out agreement on the additional Title V language...we're so close.

Conference Number: 712-■■■■-■■■■
Pass Code: ■■■■■■

Thanks,

Kyle

Kyle Lombardi
Legislative Director
House Majority Leader Kevin McCarthy
2421 Rayburn House Office Building
Washington, D.C. 20515

P: 202-225-2915
F: 202-225-2908

www.kevinmccarthy.house.gov

From: Jennifer Buckman

Sent: Wednesday, November 19, 2014 11:19 AM

To: Watts, John (Feinstein); Weaver, Kiel; John Bezdek (John_Bezdek@ios.doi.gov)

CC: 'Stuart L. Somach'; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Berliner, Thomas M.; Walthall, Brent; Tom Birmingham; Yeung, Felix (Feinstein)

Subject: RE: Call with Interior at 11 am PST tomorrow to discuss Title V draft language

Attachments: Title V - at conclusion of 11-19-14 calls.docx

Importance: High

For our call this afternoon, attached is what I believe to be the most recent version of Title V. The redline shows changes agreed to from 11/13.

Jennifer T. Buckman, Esq.

General Counsel

Friant Water Authority

916.382.4344

 (cell)

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]

Sent: Tuesday, November 18, 2014 4:01 PM

To: Weaver, Kiel; John Bezdek (John_Bezdek@ios.doi.gov)

Cc: 'Stuart L. Somach'; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Berliner, Thomas M.; Walthall, Brent; Tom Birmingham; Jennifer Buckman; Yeung, Felix (Feinstein)

Subject: Call with Interior at 11 am PST tomorrow to discuss Title V draft language

Hi all.

John Bezdek of Interior is available for a call at 11am PST / 2pm EST tomorrow (Wednesday) to discuss the draft Title V language.

Please use the following call-in information:

[Local: \(202\) 228-0808](tel:(202)228-0808)

[Toll Free: \(855\) 428-0808](tel:(855)428-0808)

Conference ID: 9656738

Look forward to talking with you tomorrow.

Best,

John

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TITLE V—WATER RIGHTS PROTECTIONS

SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

~~If, as a result of the application of this Act, the California Department of Fish and Wildlife:~~

(a) The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination issued for operations of the State Water Project pursuant to California Fish and Game Code section 2081.

(b) If, as a result of the application of this Act, the California Department of Fish and Wildlife:

- (i) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;
- (ii) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or
- (iii) requires take authorization under section 2081 for operation of the State Water Project in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion, and as a consequence of the Department's action, the Central Valley Project yield is greater able to export more water than it would have been exported absent the Department's action and there is an increase in Central Valley Project yield, any such that additional yield increase shall be shared equally with made available to the State Water Project for delivery to State Water Project contractors to offset losses resulting from the Department's action. Within 30 days of implementing this Act, the Secretary shall request written immediately notification from the Director of the California Department of Fish and Wildlife if the Secretary determines that indicating whether implementation of the Biological Opinions consistent with this Act will affect the status of reduces environmental protections for any species covered by the opinions. consistency determinations for operation of the State Water Project.

SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley

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Project (CVP) to adhere to California's water rights laws governing water rights priorities and to honor water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2. Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) ~~Any action by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531, et seq.) that requires that diversions from the Sacramento River or the San Joaquin River watersheds upstream of the Delta be bypassed shall be undertaken in a manner that is consistent with water rights priorities established by California law. [Stuart and Brent to have follow up discussion]~~

Any action undertaken by the Secretary or the Secretary of Commerce pursuant to both this Act and Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531, et seq.), as amended, that requires that diversions from the Sacramento River or the San Joaquin River watersheds upstream of the Delta be bypassed shall not alter be undertaken in a manner that is consistent with be undertaken in a manner that alters the water rights priorities established by California law. Nothing in this Title alters the existing authorities provided to and obligations placed upon the Federal government under the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.), as amended, and the United States' obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors and to the other south of Delta settlement contractors, and consistent with the Coordinated Operations Agreement between DWR and USBR, as well as DWR's and USBR's implementation of the Endangered Species Act obligations between 2008-2014.

SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

- (a) The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) as amended and other applicable federal and state laws, shall not directly or indirectly result in the involuntary reduction of water supply or fiscal impacts to individuals or districts who receive water from the State Water Project or from the United States under water rights settlement contracts, exchange contracts, water service contracts, or repayment contracts, or water supply contracts or cause redirected adverse water supply or fiscal impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area.
- (b) To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.
- (c) Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange contracts and settlement

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contracts prior to the allocation of any other Central Valley Project water.

(d) Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing State Water Project water supply or settlement contract with the State.

SEC. 504. EFFECT ON STATE LAWS.

Nothing in this Act preempts or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law including established water rights priorities. [John Watts objected to the deletion; there will be follow up discussion with Kyle Lombardi when he is available.]

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SEC. 505. [].

(a) In General.--Subject to: (i) the absolute priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project; (ii) the United States' obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and (iii) subsection (b), the Secretary is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

(1) Not less than 100% of their contract quantities in a "Wet" year.

(2) Not less than 100% of their contract quantities in an "Above Normal" year.

(3) Not less than 100% of their contract quantities in a "Below Normal" year that is preceded by an "Above Normal" or a "Wet" year.

(4) Not less than 50% of their contract quantities in a "Dry" year that is preceded by a "Below Normal," an "Above Normal," or a "Wet" year.

(5) In all other years not identified herein, the allocation percentage for existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed shall not be less than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors, up to 100%; provided, that nothing herein shall preclude an allocation to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed that is greater than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors.

(b) Protection of Municipal and Industrial Supplies.--Nothing in subsection (a) shall be deemed to: (i) modify any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary; (ii) affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies; (iii) affect or limit the authority of the Secretary to implement municipal and industrial water shortage policies; or (iv) affect allocations to Central Valley Project municipal and industrial contractors pursuant to such policies. Neither subsection (a) nor the Secretary's implementation of subsection (a) shall constrain, govern or affect, directly or indirectly, the operations of the Central Valley Project's

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American River Division or any deliveries from that Division, its units or its facilities.

(c) This section does not affect the allocation of water to Friant Division contractors and shall not result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant Division.

(d) The Secretary will direct that the United States Bureau of Reclamation develop and implement a program, within one year of enactment of this bill, to provide for the opportunity for existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed to reschedule water, provided for under their CVP water service contracts, from one year to the next.

(e) Definitions.--In this section:

(1) The term "existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed" means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation.

(2) The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40-30-30) Index.

From: Tom Birmingham
Sent: Wednesday, November 19, 2014 11:34 AM
To: jbuckman@friantwater.org
Subject: Fwd: Edits from Call regarding title V
Attachments: Title V Edits 11-17-14 (4)editsfromcall.docx; Untitled attachment 15980.htm

Jeni,
Here is the document.
Tom

Sent from my iPhone

From: "Bernhardt, David L." <DBernhardt@BHFS.com>
Date: November 19, 2014 at 1:17:20 PM EST
To: "'Kyle.Lombardi@mail.house.gov'" <Kyle.Lombardi@mail.house.gov>
Cc: "'Kiel.Weaver@mail.house.gov'" <Kiel.Weaver@mail.house.gov>, "Thomas W. Birmingham (tbirmingham@westlandswater.org)" <tbirmingham@westlandswater.org>, "'Watts, John (Feinstein)'" <John_Watts@feinstein.senate.gov>
Subject: Edits from Call regarding title V

Kyle: Here are the edits based on the telephone call you held. Please circulate them to the group. I was not on the distribution list.

David

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Green – Previously revised language

Purple – Revised language

TITLE V—WATER RIGHTS PROTECTIONS

SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

(a) The Secretary of the Interior (Secretary) shall confer with the California Department of Fish and Wildlife in connection with the implementation ensure to the maximum extent practicable that If, as a result of the application of this Act on potential impacts to, shall be carried out in manner that supports the California Department of Fish and Wildlife consideration of any consistency determination for operations of the State Water Project with issued pursuant to California Fish and Game Code section 2081. ~~If the application of this Act results in the consequence described in section, the Secretary shall consider whether the actions taken or imposed as a result of this Act would be consistent with Section 503.~~

(b) If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(1) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;

(2) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that **directly or indirectly** results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or

(3) requires take authorization under section 2081 for operation of the State Water Project in a manner that **directly or indirectly** results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion,

and as a consequence of the Department's action, ~~there is an increase in~~ Central Valley Project yield is greater than it would have been absent the Department's actions, that additional yield shall be made available to the State Water Project for delivery to the State Water Project contractors **to offset losses resulting from the Department's action.** ~~any such increase shall be shared equally with the State Water Project. Prior to Within 30 days of implementing this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project. The Secretary shall immediately notify the director of the California Department of Fish and Wildlife in writing if the Secretary determines that implementation of the Biological Opinions consistent with this Act reduces environmental protections for any species covered by the opinions. Actions implemented under this act are deemed consistent with the biological opinions unless such notice is issued. For any action triggering a notice under this subsection, the Secretary shall coordinate with the Director of the~~

~~California Department of Fish and Wildlife prior to implementation of that action that results in any reduction in protections to listed species in the biological opinions.~~

SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities ~~and to by honoring water rights senior to those held by the United States for operation of the CVP,~~ regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2. Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) ~~Any action that requires that diversions be bypassed or that involves the release of water from any CVP water storage facility taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1537, et seq.) shall be applied in a manner that is consistent with water rights priorities established by California law. [Stuart Somach to provide NCWA redraft of this language consistent with the group's discussion.]~~ Any action undertaken by the Secretary or the Secretary of Commerce pursuant to this Act to implement Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1537, et seq.), as amended, that requires that diversions from the Sacramento River or the San Joaquin River watersheds upstream of the Delta be bypassed shall be consistent with water rights priorities established by California law. Nothing in this Title alters the existing authorities provided to and obligations place upon the Federal government under the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.), as amended.

SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

(a) ~~No provision of this Act shall be interpreted or implemented to prevent the protections provided by this Section 503.~~ The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) as amended and other applicable federal and state laws, shall not directly or indirectly result in the involuntary reduction of water supply ~~or fiscal impacts~~ to individuals or districts who receive water from either the State Water Project or from the United States under water rights settlement contracts, exchange contracts, water service ~~contracts, water supply contracts, or~~ repayment contracts, or water supply contracts ~~or cause redirected adverse water supply or fiscal impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area.~~

(b) To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.

(c) ~~Except as provided in this Act, n~~ Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange

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1 contracts and settlement contracts prior to ~~the~~ allocation of ~~any other~~ Central Valley
2 Project ~~yield~~ water. *[This language was developed in the call immediately following the*
3 *large group call, per the request made to the representatives of Westlands, the Exchange*
4 *Contractors, Friant and Kern.]*

5 (d) Nothing in this Act shall modify or amend the rights and obligations of the parties to any
6 existing State Water Project water supply or settlement contract with the State.

7 **SEC. 504. EFFECT ON EXISTING LAWS.**

8 Nothing in this Act preempts ~~any State law in effect on the date of enactment of this Act~~ or
9 modifies any existing obligation of the United States under Federal reclamation law to operate
10 the Central Valley Project in conformity with State law including established water rights
11 priorities.

12
13 **SEC. 505. [TCCA PROPOSED LANGUAGE].**

14 *[This language was provided separately. Refinements to this language were worked out after*
15 *the group call by the representatives of Westlands, the Exchange Contractors, Friant and Kern.]*

From: Jennifer Buckman

Sent: Wednesday, November 19, 2014 12:18 PM

To: Berliner, Thomas M.

CC: 'Stuart L. Somach '; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Walthall, Brent; Tom Birmingham; pminasian@minasianlaw.com

Subject: RE: Call with Interior at 11 am PST tomorrow to discuss Title V draft language

Importance: High

Yes. We should talk about this offline.

Jennifer T. Buckman, Esq.

General Counsel

Friant Water Authority

916.382.4344

██████████ (cell)

From: Berliner, Thomas M. [<mailto:TMBerliner@duanemorris.com>]

Sent: Wednesday, November 19, 2014 11:16 AM

To: Jennifer Buckman

Cc: 'Stuart L. Somach '; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Walthall, Brent; Tom Birmingham; pminasian@minasianlaw.com

Subject: RE: Call with Interior at 11 am PST tomorrow to discuss Title V draft language

Importance: High

Any objections to the protective language in Sec 505(a) re the Exchange Contractors? I added the reference to water rights in parallel to the Sac River contractors.

SEC. 505. [].

(a) In General.--Subject to: (i) the absolute priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project; (ii) **the absolute priority of the San Joaquin River Exchange Contractors with San Joaquin River water rights and** the United States' obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and (iii) subsection (b), the Secretary is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

From: Jennifer Buckman [<mailto:jbuckman@friantwater.org>]

Sent: Wednesday, November 19, 2014 10:19 AM

To: Watts, John (Feinstein); Weaver, Kiel; John Bezdek (John.Bezdek@ios.doi.gov)

Cc: 'Stuart L. Somach '; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Berliner, Thomas M.; Walthall, Brent; Tom Birmingham; Yeung, Felix (Feinstein)

Subject: RE: Call with Interior at 11 am PST tomorrow to discuss Title V draft language

Importance: High

For our call this afternoon, attached is what I believe to be the most recent version of Title V. The redline shows changes agreed to from 11/13.

Jennifer T. Buckman, Esq.
General Counsel
Friant Water Authority
916.382.4344
[REDACTED] (cell)

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Tuesday, November 18, 2014 4:01 PM
To: Weaver, Kiel; John Bezdek (John_Bezdek@ios.doi.gov)
Cc: 'Stuart L. Somach'; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Berliner, Thomas M.; Walthall, Brent; Tom Birmingham; Jennifer Buckman; Yeung, Felix (Feinstein)
Subject: Call with Interior at 11 am PST tomorrow to discuss Title V draft language

Hi all.

John Bezdek of Interior is available for a call at 11am PST / 2pm EST tomorrow (Wednesday) to discuss the draft Title V language.

Please use the following call-in information:

[Local: \(202\) 228-0808](tel:(202)228-0808)
[Toll Free: \(855\) 428-0808](tel:(855)428-0808)

Conference ID: 9656738

Look forward to talking with you tomorrow.

Best,

John

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For more information about Duane Morris, please visit <http://www.DuaneMorris.com>

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From: Jennifer Buckman

Sent: Wednesday, November 19, 2014 12:21 PM

To: Berliner, Thomas M.

CC: 'Stuart L. Somach '; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Walthall, Brent; Tom Birmingham; pminasian@minasianlaw.com

Subject: RE: Call with Interior at 11 am PST tomorrow to discuss Title V draft language

OK

From: Berliner, Thomas M. [<mailto:TMBerliner@duanemorris.com>]

Sent: Wednesday, November 19, 2014 11:20 AM

To: Jennifer Buckman

Cc: 'Stuart L. Somach '; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Walthall, Brent; Tom Birmingham; pminasian@minasianlaw.com

Subject: RE: Call with Interior at 11 am PST tomorrow to discuss Title V draft language

Fine. After this call?

From: Jennifer Buckman [<mailto:jbuckman@friantwater.org>]

Sent: Wednesday, November 19, 2014 11:18 AM

To: Berliner, Thomas M.

Cc: 'Stuart L. Somach '; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Walthall, Brent; Tom Birmingham; pminasian@minasianlaw.com

Subject: RE: Call with Interior at 11 am PST tomorrow to discuss Title V draft language

Importance: High

Yes. We should talk about this offline.

Jennifer T. Buckman, Esq.

General Counsel

Friant Water Authority

916.382.4344

██████████ (cell)

From: Berliner, Thomas M. [<mailto:TMBerliner@duanemorris.com>]

Sent: Wednesday, November 19, 2014 11:16 AM

To: Jennifer Buckman

Cc: 'Stuart L. Somach '; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Walthall, Brent; Tom Birmingham; pminasian@minasianlaw.com

Subject: RE: Call with Interior at 11 am PST tomorrow to discuss Title V draft language

Importance: High

Any objections to the protective language in Sec 505(a) re the Exchange Contractors? I added the reference to water rights in parallel to the Sac River contractors.

SEC. 505. [].

(a) In General.--Subject to: (i) the absolute priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project; (ii) the absolute priority of

the San Joaquin River Exchange Contractors with San Joaquin River water rights and the United States' obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and (iii) subsection (b), the Secretary is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

From: Jennifer Buckman [<mailto:jbuckman@friantwater.org>]
Sent: Wednesday, November 19, 2014 10:19 AM
To: Watts, John (Feinstein); Weaver, Kiel; John Bezdek (John_Bezdek@ios.doi.gov)
Cc: 'Stuart L. Somach'; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Berliner, Thomas M.; Walthall, Brent; Tom Birmingham; Yeung, Felix (Feinstein)
Subject: RE: Call with Interior at 11 am PST tomorrow to discuss Title V draft language
Importance: High

For our call this afternoon, attached is what I believe to be the most recent version of Title V. The redline shows changes agreed to from 11/13.

Jennifer T. Buckman, Esq.
General Counsel
Friant Water Authority
916.382.4344
[REDACTED] (cell)

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Tuesday, November 18, 2014 4:01 PM
To: Weaver, Kiel; John Bezdek (John_Bezdek@ios.doi.gov)
Cc: 'Stuart L. Somach'; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Berliner, Thomas M.; Walthall, Brent; Tom Birmingham; Jennifer Buckman; Yeung, Felix (Feinstein)
Subject: Call with Interior at 11 am PST tomorrow to discuss Title V draft language

Hi all.

John Bezdek of Interior is available for a call at 11am PST / 2pm EST tomorrow (Wednesday) to discuss the draft Title V language.

Please use the following call-in information:

[Local: \(202\) 228-0808](tel:(202)228-0808)
[Toll Free: \(855\) 428-0808](tel:(855)428-0808)

Conference ID: 9656738

Look forward to talking with you tomorrow.

Best,

John

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From: Jennifer Buckman

Sent: Wednesday, November 19, 2014 1:36 PM

To: Watts, John (Feinstein); Weaver, Kiel; John Bezdek (John_Bezdek@ios.doi.gov)

CC: 'Stuart L. Somach'; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Berliner, Thomas M.; Walthall, Brent; Tom Birmingham; Yeung, Felix (Feinstein); Weiland, Paul S.

Subject: RE: Call with Interior at 11 am PST tomorrow to discuss Title V draft language

Attachments: Title V - 11-19-14 after group call w Bezdek.docx

Importance: High

Here is an updated version of the language reflecting where I think we are after the 11:00 call. We did not have many changes during this call, just a correction to the citation to the Fish and Game Code and the deletion of "absolute" before "priority." The notes reflect items that are still outstanding.

Please feel free to send in corrections if I missed anything.

Jennifer T. Buckman, Esq.

General Counsel

Friant Water Authority

916.382.4344

██████████ (cell)

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]

Sent: Tuesday, November 18, 2014 4:01 PM

To: Weaver, Kiel; John Bezdek (John_Bezdek@ios.doi.gov)

Cc: 'Stuart L. Somach'; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Berliner, Thomas M.; Walthall, Brent; Tom Birmingham; Jennifer Buckman; Yeung, Felix (Feinstein)

Subject: Call with Interior at 11 am PST tomorrow to discuss Title V draft language

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[Toll Free: \(855\) 428-0808](tel:(855)428-0808)

Conference ID: 9656738

Look forward to talking with you tomorrow.

Best,

John

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TITLE V—WATER RIGHTS PROTECTIONS

SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

~~If, as a result of the application of this Act, the California Department of Fish and Wildlife:~~

(a) The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination issued for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(i) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;

(ii) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or

(iii) requires take authorization under section 2081 for operation of the State Water Project in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion,

~~and as a consequence of the Department's action, the Central Valley Project yield is greater able to export more water than it would have been exported absent the Department's actions and there is an increase in Central Valley Project yield, any such that additional yield increase shall be shared equally with made available to the State Water Project for delivery to State Water Project contractors to offset losses resulting from the Department's action. Within 30 days of implementing this Act, the Secretary shall request written immediately notification from the Director of the California Department of Fish and Wildlife in writing if the Secretary determines that indicating whether implementation of the Biological Opinions consistent with this Act will affect the status of reduces environmental protections for any species covered by the opinions. consistency determinations for operation of the State Water Project.~~

SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities and to honor water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 19,

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1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2, Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) Any action undertaken by the Secretary or the Secretary of Commerce pursuant to both this Act and Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531, et seq.), as amended, that requires that diversions from the Sacramento River or the San Joaquin River watersheds upstream of the Delta be bypassed shall not alter be undertaken in a manner that is consistent with be undertaken in a manner that alters the water rights priorities established by California law. Nothing in this Title alters the existing authorities provided to and obligations placed upon the Federal government under the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.), as amended, and the United States' obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors and to the other south of Delta settlement contractors, and consistent with the Coordinated Operations Agreement between DWR and USBR, as well as DWR's and USBR's implementation of the Endangered Species Act obligations between 2008-2014.

SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

- (a) The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) as amended and other applicable federal and state laws, shall not directly or indirectly result in the involuntary reduction of water supply or fiscal impacts to individuals or districts who receive water from either the State Water Project or from the United States under water rights settlement contracts, exchange contracts, water service contracts, or repayment contracts, or water supply contracts or cause redirected adverse water supply or fiscal impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area.
- (b) To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.
- (c) Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange contracts and settlement contracts prior to the allocation of any other Central Valley Project water.
- (d) Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing State Water Project water supply or settlement contract with the State.

SEC. 504. EFFECT ON STATE LAWS.

Nothing in this Act preempts [any state law in effect on the date of enactment of this Act] or modifies any existing obligation of the United States under Federal reclamation law to operate

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the Central Valley Project in conformity with State law including established water rights priorities. [John Watts objected to the deletion; there will be follow up discussion with Kyle Lombardi when he is available.]

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SEC. 505. [TO BE TITLED].

(a) In General.--Subject to: (i) the absolute priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project; (ii) the United States' obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and (iii) subsection (b), the Secretary is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

(1) Not less than 100% of their contract quantities in a "Wet" year.

(2) Not less than 100% of their contract quantities in an "Above Normal" year.

(3) Not less than 100% of their contract quantities in a "Below Normal" year that is preceded by an "Above Normal" or a "Wet" year.

(4) Not less than 50% of their contract quantities in a "Dry" year that is preceded by a "Below Normal," an "Above Normal," or a "Wet" year.

(5) In all other years not identified herein, the allocation percentage for existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed shall not be less than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors, up to 100%; provided, that nothing herein shall preclude an allocation to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed that is greater than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors.

(b) Protection of Municipal and Industrial Supplies.--Nothing in subsection (a) shall be deemed to: (i) modify any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary; (ii) affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies; (iii) affect or limit the authority of the Secretary to implement municipal and industrial water shortage policies; or (iv) affect allocations to Central Valley Project municipal and industrial contractors pursuant to such policies. Neither subsection (a) nor the Secretary's implementation of subsection (a) shall constrain, govern or affect, directly or indirectly, the operations of the Central Valley Project's American River Division or any deliveries from that Division, its units or its facilities.

(c) This section does not affect the allocation of water to Friant Division contractors and shall not result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant Division.

(d) The Secretary will direct that the United States Bureau of Reclamation develop and implement a program, within one year of enactment of this bill, to provide for the opportunity for existing Central Valley Project agricultural water service contractors within the Sacramento

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River Watershed to reschedule water, provided for under their CVP water service contracts, from one year to the next.

(e) Definitions.--In this section:

(1) The term "existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed" means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation.

(2) The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40-30-30) Index.

[Per Bezdek's request, Sutton and Birmingham will talk to Ron Milligan; Sutton and Buckman will work with Bezdek on language to be added regarding refuge priorities.]

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From: Watts, John (Feinstein)

Sent: Thursday, November 20, 2014 9:23 AM

To: Petersen, Scott (Scott.Petersen@mail.house.gov); Bernhardt, David L.; Tom Birmingham; 'Brenda W Burman'; Roger K. Patterson (rpatterson@mwdh2o.com) (rpatterson@mwdh2o.com)

CC: Peterson, James (Feinstein); Yeung, Felix (Feinstein); Mentzer, Tom (Feinstein); Duck, Jennifer (Feinstein)

Subject: Draft document on rationale for legislative proposal

Attachments: rationale for proposal 11-20-14-B.docx

Attached is an updated version of a document providing a more substantial rationale for Senator Feinstein's draft water proposal. You may recall earlier drafts of this document that were prepared over the summer.

Can you review the attached and make sure it is accurate? Thanks.

WHY LEGISLATION IS NEEDED TO MAKE SCIENCE-BASED ESA MANAGEMENT WORK BETTER FOR THE CALIFORNIA WATER PROJECTS

Summary

While this year's historic drought has caused great hardship for many of the 25 million Californians who depend on the Central Valley Project and the State Water Project, the long-term water supply outlook is even worse. This year's zero and five percent water allocations on the projects have capped eight years of unsustainably low water deliveries that have plummeted below previous water supply levels ever since the current operating procedures for the water projects were put in place around 2007. Moreover, despite dedication of a great deal of water for fish that historically would have been used for other purposes or stored for time of shortage, the condition of the listed endangered species have not markedly improved.

A sustainable water supply can be restored while preserving the fundamental premise of the Endangered Species Act (ESA), that agencies decide based on science the measures necessary to protect listed species from jeopardy before taking action. The legislative proposal strives to provide greater benefits to the listed species, with less human cost to the people and the communities who rely on these projects to provide them with a reliable water supply.

Recognizing that a better approach is needed, like former Secretary of the Interior Bruce Babbitt recognized over a decade ago, the proposal seeks to make science-based ESA management work better. The proposal does this through the following steps, which reflect principles of good decision-making where there are competing values at stake:

- Integrates the considerable new science since the biological opinions were issued, 5-6 years ago, into the way they are operated. For example, send out boats to monitor daily for Delta smelt near the water pumps at key time periods, and only reduce water pumping if the smelt are actually there and would be harmed.
- Without prescribing particular outcomes, requires agencies to explain why reductions in pumping levels are necessary to avoid jeopardy and consider other less water-costly alternatives such as barging fish or installing barriers.
- Preserves the upper limits on water pumping in the biological opinions, while requiring agencies to consider other management strategies as alternatives before restricting pumping further. Simply put, if two alternative measures are equally effective in protecting listed species, the agencies should pursue the measure with better overall outcomes, including fewer harmful effects on other affected interests. Informed by this analysis, the Secretaries of the Interior and Commerce would continue to decide the best course necessary to avoid jeopardy to listed fish.

The Precipitous Drop in Water Supplies Since 2007

There has been a precipitous drop in water supplies since the most recent biological opinions were issued. The table on the following page is quite helpful because it allows comparison of water supplies for the same hydrologic year types before and after the biological opinions came into effect. Such an evaluation is quite revealing:

- **The two “dry” years since 2009 (2009 and 2013) have had an average south-of-Delta agricultural allocation of 15%, whereas the three dry years in the previous decade (2001, 2002, and 2007) had an average 56% south-of-Delta agricultural allocation. That is a dramatic difference -- dry-year allocations before the biological opinions were issued were nearly four times greater than what they have been since.** [Note that the south of Delta ag allocation in 2013 was 20% and not 75%].
- **The two “below normal” years since 2009 (2010 and 2012) had an average south-of-Delta agricultural allocation of 42.5%, whereas the below normal year in the previous decade (2004) had a south-of-Delta allocation of 70%. That too is a dramatic difference.**
- If you compare these years based on total CVP and SWP Delta pumping rather than south-of-Delta ag allocations, the differences here are striking as well.
- Average total Delta pumping in the three dry years prior to issuance of the biological opinions was 5.42 million acre feet (“maf”) (39% higher than the 3.89 maf average for the dry years after the biological opinions were issued).
- Total Delta pumping in the below-normal year prior to issuance of the biological opinions was 6.07 maf (27% higher than the 4.78 maf average for the below-normal years after the biological opinions were issued).

The dramatic differences between water supplies before and after the issuance of the recent biological opinions *for the same hydrologic year types* confirm that a precipitous drop in water supplies has occurred.

This reality supports the central premise of Senator Feinstein’s draft legislative proposal, that it is very worthwhile to put measures into place to explore whether incrementally more water can be made available while:

- 1) protecting the species,
- 2) respecting the Secretaries’ ability to interpret the latest science, and
- 3) working with the current biological opinions as informed by that updated science.

Total Annual Pumping at Banks, Jones, and Contra Costa Pumping Plants 1976-2013 (MAF)

WY	Hydrologic Index 40-30-30	Banks			Jones			Contra Costa	CVP Total Delta Pumping	SWP Total Delta Pumping	CVP SOD-Ag Allocation	Shasta Index Critical
		SWP	CVP	Total	SWP	CVP	Total					
1976	C	1.82	0.00	1.82	0.00	3.01	3.01	N/A	3.01	1.82	100%	
1977	C	0.76	0.04	0.80	0.00	1.28	1.28	0.09	1.41	0.76	25%	C
1978	AN	2.01	0.04	2.05	0.00	2.26	2.26	0.08	2.38	2.01	100%	
1979	BN	1.76	0.23	1.98	0.00	2.30	2.30	0.09	2.61	1.76	100%	
1980	AN	2.17	0.34	2.52	0.00	2.00	2.00	0.09	2.43	2.17	100%	
1981	D	1.97	0.10	2.07	0.00	2.60	2.60	0.11	2.80	1.97	100%	
1982	W	2.43	0.20	2.63	0.00	1.97	1.97	0.08	2.25	2.43	100%	
1983	W	1.76	0.13	1.89	0.00	2.51	2.51	0.08	2.72	1.76	100%	
1984	W	1.40	0.25	1.65	0.00	2.19	2.19	0.10	2.54	1.40	100%	
1985	D	2.16	0.53	2.68	0.00	2.79	2.79	0.11	3.43	2.16	100%	
1986	W	2.46	0.21	2.67	0.00	2.62	2.62	0.11	2.94	2.46	100%	
1987	D	2.01	0.27	2.28	0.00	2.76	2.76	0.13	3.16	2.01	100%	
1988	C	2.32	0.38	2.71	0.00	2.90	2.90	0.14	3.42	2.32	100%	
1989	D	2.70	0.39	3.10	0.00	2.87	2.87	0.13	3.40	2.70	100%	
1990	C	2.86	0.24	3.10	0.00	2.70	2.70	0.14	3.07	2.86	50%	
1991	C	1.64	0.14	1.78	0.00	1.41	1.41	0.11	1.65	1.64	25%	C
1992	C	1.53	0.04	1.57	0.00	1.34	1.34	0.10	1.48	1.53	25%	C
1993	AN	2.53	0.02	2.55	0.00	2.11	2.11	0.10	2.22	2.53	50%	
1994	C	1.73	0.24	1.97	0.00	2.02	2.02	0.11	2.37	1.73	35%	C
1995	W	2.48	0.03	2.50	0.00	2.58	2.58	0.09	2.70	2.48	100%	
1996	W	2.60	0.01	2.61	0.06	2.57	2.63	0.10	2.68	2.66	95%	
1997	W	2.12	0.34	2.46	0.00	2.51	2.51	0.11	2.96	2.12	90%	
1998	W	2.07	0.04	2.11	0.01	2.46	2.47	0.16	2.66	2.09	100%	
1999	W	2.37	0.04	2.41	0.00	2.26	2.26	0.13	2.44	2.37	70%	
2000	AN	3.45	0.22	3.66	0.00	2.49	2.49	0.13	2.83	3.45	65%	
2001	D	2.37	0.23	2.60	0.01	2.32	2.33	0.10	2.66	2.38	49%	
2002	D	2.70	0.17	2.87	0.00	2.50	2.50	0.12	2.79	2.70	70%	
2003	AN	3.39	0.04	3.43	0.00	2.68	2.68	0.14	2.86	3.39	75%	
2004	BN	3.14	0.09	3.23	0.00	2.72	2.72	0.12	2.93	3.14	70%	
2005	AN	3.58	0.03	3.61	0.00	2.68	2.68	0.12	2.83	3.58	85%	
2006	W	3.50	0.01	3.51	0.00	2.62	2.62	0.12	2.74	3.50	100%	
2007	D	2.82	0.11	2.93	0.00	2.67	2.67	0.11	2.90	2.82	50%	
2008	C	1.48	0.02	1.50	0.00	1.99	1.99	0.13	2.15	1.48	40%	
2009	D	1.49	0.12	1.61	0.00	1.86	1.86	0.11	2.09	1.49	10%	
2010	BN	2.39	0.08	2.47	0.00	2.12	2.12	0.09	2.29	2.39	45%	
2011	W	3.96	0.02	3.98	0.00	2.54	2.54	0.06	2.63	3.96	80%	
2012	BN	2.60	0.03	2.63	0.00	2.07	2.07	0.17	2.27	2.60	40%	
2013	D	2.16	.04	2.20	0.00	1.84	1.84	0.15	2.03	2.16	20%	

The current operational regime is not sustainable for those that rely on these projects. Even recognizing the potential benefits of the Bay Delta Conservation Plan (BDCP), which will not be implemented for at least 15 years, the human impacts of this policy regime are real, acute, and destabilizing. Other measures are also needed, such as increased surface and groundwater storage, improved conservation and recycling, and additional water supply investments. However, these measures cannot remedy the water supply shortfall by themselves, and will cost the taxpayers billions of dollars.

The continuation of the current practice will place greater demands on food banks, exacerbate high unemployment that already exists in disadvantaged communities, particularly within the Central Valley, and further frustrate the inability of many families to obtain credit and sustain their livelihoods.

Secretarial Discretion Reinforced and Maintained

The proposal maintains the Secretaries' responsibility and discretion to protect listed fish species by avoiding jeopardy, and upholds the imperative of relying on best available science.

The proposal does not require the Secretaries to operate the water pumps at prescribed levels, or dictate particular water operation that ignores the needs of fish. Instead, the Secretaries are merely directed to obtain, document, and implement the best available scientific data so that when they exercise the discretion given to them under existing laws and regulations to either lower or raise water pumping levels, they have the necessary information to explain their decision. The science-based framework of the biological opinions is preserved. For example:

- Under the smelt proposal, there is no requirement that the Secretaries maintain negative 5,000 cubic feet per second (cfs) Old and Middle River flows if lower pumping levels are required to avoid jeopardy to the Delta smelt.
- Under the salmon proposal, the Secretary of Commerce is required to explain the basis for raising or lowering OMR flow levels within the range of the biological opinion, and to consider how alternative measures compare against water supply reductions in avoiding jeopardy to the salmon, but there is no requirement that the Secretary adopt one measure or another contrary to her discretion.
- In addition, the Secretary of Commerce is only directed to substitute alternative management proposals for current regulatory restrictions if they provide equivalent protections for listed salmonid species.
- The proposal for the first few storms of the 2014-2015 water year is intended to allow the Secretaries to continue existing management measures found necessary to avoid jeopardy.

The Secretaries will maintain their role in defining jeopardy, as they do now, based on scientific data, to protect listed species as prescribed by the existing biological opinions.

Integrating New Science into the Management of the Species

Since the biological opinions for the California water projects were adopted in 2008 and 2009, there has been considerable new science on the smelt and the salmon. The proposal attempts to integrate the new science into the operation of the California water projects, without mandating specific changes in the biological opinions or prescribing particular outcomes.

Delta Smelt

Incidental Take. The smelt biological opinion calculated the Delta Smelt Incidental Take Level (ITL) using data from just three years: 2006, 2007, and 2008. Using only three years to calculate the ITL severely limits the method's ability to estimate the biological and physical conditions that are likely to occur during the life of the smelt biological opinion. Increased understanding of the factors associated with Delta smelt salvage from the past several years means that the Fish and Wildlife Service should now be able to use information from before and after 2006 to provide the basis for a more robust ITL.

Increase Monitoring. The proposal allows for more real-time data collection to inform real-time decisions. Numerous analyses of adult smelt salvage patterns have linked salvage to elevated turbidity levels and high negative flows in Old and Middle River. But while the high salvage of Delta smelt tends not to occur without high turbidity in Old and Middle River (OMR), the existence of high turbidity does not guarantee high salvage, even when OMR flows are highly negative. The proposed sampling is designed to test for the presence of adult Delta smelt in Old River as the water becomes turbid following winter storms. If smelt are detected, then Project operations can be modified in time to avoid salvage. If no smelt are detected, then Project operations need not be heavily curtailed.

Salmonids

Increase Survival Immediately. Studies conducted since 2000 show through-Delta survival of San Joaquin Basin juvenile Chinook has been poor to abysmal (2% to 12%) since 2006. Poor survival has continued despite experimental increases in San Joaquin River flows and decreased water diversions dictated by the biological opinions. Best available science suggests the primary reason for low survival in the Delta is the lack of suitable juvenile salmon habitat and resulting high predation rates. In other words, water diversion decreases and changes in the inflow/export ratio have not enhanced access or quality of salmonid habitat, and therefore have not appreciably affected survival. A long-term solution is needed.

In the short-term, however, measures must be taken to increase survival through the Delta. This proposal mirrors successful programs in the Pacific Northwest that provide safe transport for juvenile salmonids through poor survival environments. While various methods for transport are available, the most successful have been "barging" programs that stay in-river with constantly circulating water. Through barging, juveniles avoid predation but maintain a connection with their migratory path, greatly increasing their chance of survival and successful return as adults. The juvenile wild fish would still naturally spawn upriver and swim themselves to the Delta, before being barged through the Delta. Barging has the potential to dramatically increase the survival of salmonids emigrating from the San Joaquin system, improving from very poor survival rates of 2-12% to high survival rates of 54% to 96%.

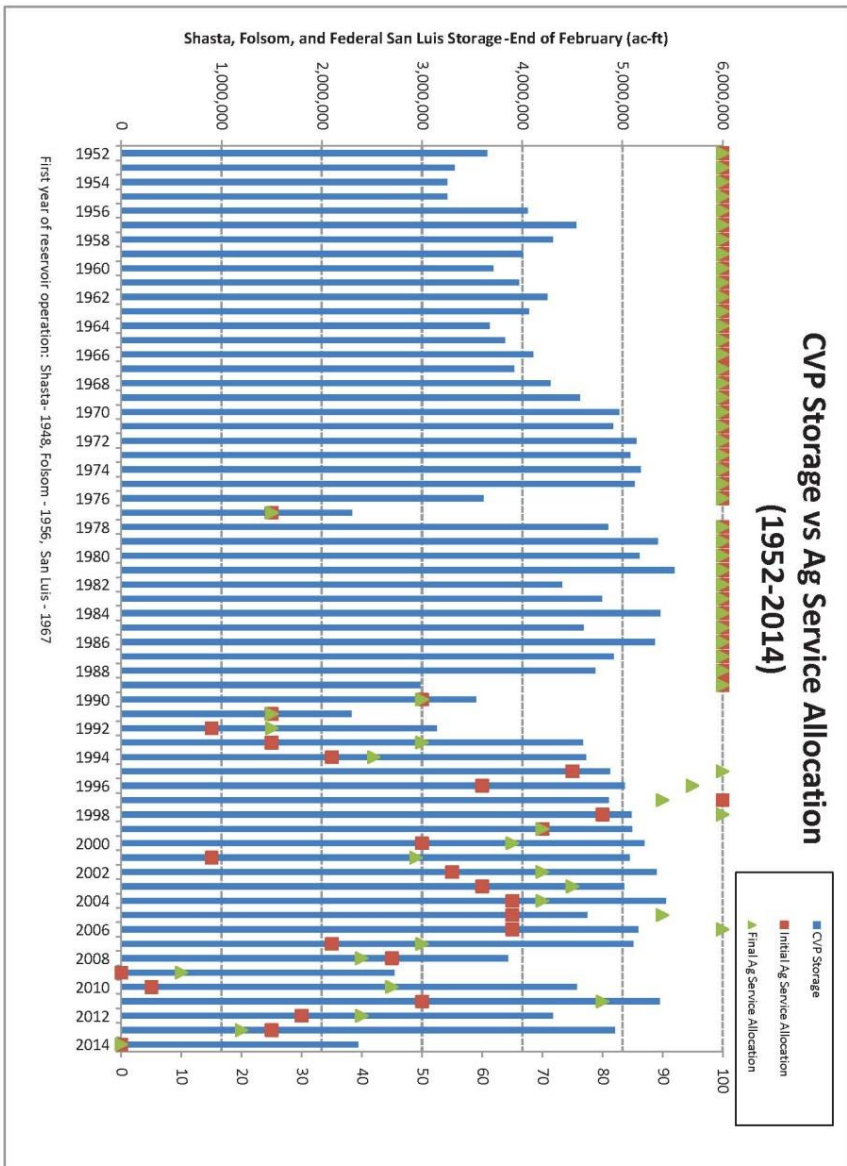
Review Management Alternatives. Delta water exports alter water movements in the Delta and can entrain migrating juvenile salmonids. However, based on particle tracking studies, the 2009 Biological Opinion hypothesized a much larger effect (in geographic range and magnitude of importance) than has been supported by more recent and robust acoustic telemetry studies of the salmonids. In addition, the reasonable and prudent alternatives in the biological opinion did not adequately address other stressors in the Delta which may overwhelm or compromise the effectiveness of water project restrictions. To clarify the relative importance of export effects, and to help identify other management actions that can contribute to species recovery, the proposal calls for the Secretary of Commerce to analyze and quantify survival benefits from a suite of action alternatives. These actions include existing export restrictions, a trap-and-barge program, barriers to fish entrainment, habitat enhancements, and predation control programs. By conducting a rigorous analysis of these and other actions, the National Marine Fisheries Service will demonstrate the effectiveness of existing reasonable and prudent alternative actions and potentially identify new actions that can achieve greater or equal benefits with reduced water costs.

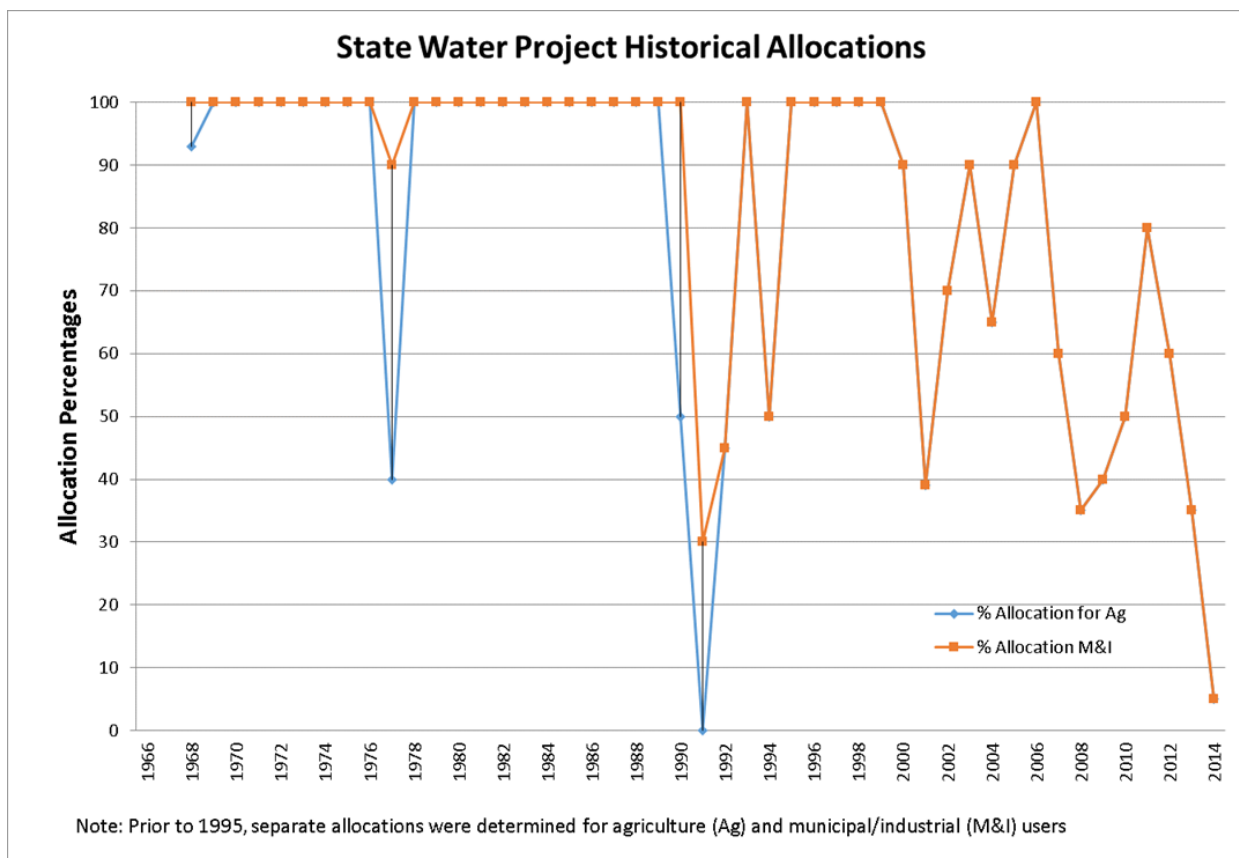
More Information on the Serious Drop in Water Supplies Since 2007

The chart on the next page compares annual Central Valley Project (CVP) storage, with initial and final allocations for south-of-Delta agriculture.

Since 2007, only once has the final south-of-Delta agriculture allocation exceeded 50% (the very wet year of 2011) – and it has typically been significantly below 50%. **The implications of this chart are striking: Under current operations, many farmers and communities south of the Delta get only a small fraction of their contracted water supplies, in all but the very wettest of years. This is the case even when the CVP has considerable water supplies in storage – because the biological opinions are blocking the ability to move this water through the Delta to the farms and cities in the San Joaquin Valley and Southern California.**

The chart also highlights the marked departure of the last six years from the past. The salmon and Delta smelt were listed under the Endangered Species Act in the early 1990's, and the Central Valley Improvement Act was enacted in 1992, so substantial water supply restrictions were in place from the 1990's through 2006. Nevertheless, during this time, final allocations were generally 50% or greater. It is only since 2006 that they have fallen off a cliff.





The chart above documents that State Water Project users have suffered the same precipitous decline in water reliability since 2007 as south-of-Delta agricultural users of the Central Valley Project. The Central Valley Project and State Water Project together deliver water to 25 million people. The State Water Project supplies water across California from the Bay Area and Silicon Valley, to the Central Valley, and the Central Coast and Santa Barbara, and to vast Southern California. While urban areas are more likely to have access to multiple sources of water that may be used in drought, the State Water Project is a base supply of high quality water that urban areas use to support groundwater use and replenishment, recycling projects, and regular deliveries.

From: Jason Peltier

Sent: Thursday, November 20, 2014 9:39 AM

To: T Birmingham (tbirmingham@westlandswater.org); Dennis Cardoza; 'Alan Elias'; 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; 'Catherine Karen'; 'Cheryl Faunce'; 'Dan Pope'; 'Darlene Knauf'; 'David Bernhardt'; 'Doug Subers'; 'Ed Manning'; 'Erick Mullen'; 'Gayle Holman'; 'Jason Peltier'; 'Jim Watson'; 'Joe Findaro'; 'Mike Burns'; 'Sheila Greene'; 'Susan Ramos'

Subject: Mother Jones Article

Tom Philpott

Previous

→ Food and Ag, Regulatory Affairs, Top Stories

Is Dianne Feinstein Crafting a Secret Water Deal to Help Big Pistachio?

—By Tom Philpott

| Thu Nov. 20, 2014 6:00 AM EST

Email

47



Arno Burgi/Zuma

Sen. Dianne Feinstein (D-Calif.) is negotiating a behind-closed-doors deal with Republican lawmakers to pass a bill that would ostensibly address California's drought—an effort that has uncorked a flood of criticism from environmental circles.

Feinstein's quiet push for a compromise drought bill that's palatable to Big Ag-aligned House Republicans has been in the works for six months, Kate Poole, a senior attorney with the Natural Resources Defense Council, told me. And it has accelerated recently, as the Senator hopes to pass it by year end, during the "lame duck" period of the outgoing Democratic-controlled Senate.

Feinstein spokesman Tom Mentzer wrote in an email that "draft language continues to be negotiated between House and Senate offices and nothing is final." But he would divulge no other details—not even a timeline for when a broad outline of the controversial legislation might be released to the public.

The main issue involves management of the Central Valley Project, a federally owned irrigation system that moves water from California's Sierra Nevada mountain range to farmland in the state's main growing region, the Central Valley.

The state's high-powered farm interests, particularly those in the desert-like zones of the Central Valley's southwestern corner, want to maximize their access to these federally controlled water flows. This is precisely the part of the Central Valley that's in the midst of a huge expansion of water-intensive almond and pistachio orchards.

"We've taken our vow of secrecy," Rep. Valadao, who sponsored the House bill, said Tuesday.

Environmental groups like NRDC, meanwhile, seek to ensure sufficient water for the ecologically fragile Sacramento-San Joaquin Delta, which lies at the heart of the Central Valley Project, at the confluence of the state's two largest rivers. The US Fish and Wildlife Service lists 19 Delta-dwelling species as "endangered" or "threatened." The most famous of the threatened fish is the tiny delta smelt, which is what scientists call an "indicator species," meaning that their health serves as a barometer of the larger ecosystem's robustness. The delta smelt occupies the base of the area's food web, feeding on simple organisms like plankton and providing forage for larger fish.

Back in February, the Republican-controlled House passed a bill that would effectively end efforts to reserve substantial water for the Delta and permanently allocate more water to farmers. Central Valley-based Rep. Devin Nunes (R.-Calif.), a major champion of the bill, had sponsored similar bills before the current drought set in, only to see them languish, Poole says. This time, Nunes, along with the bill's sponsor, freshman Central Valley-based Rep. David Valadao (R.-Calif.) "used the drought as an excuse to pass a bunch of wish-list rollbacks these guys have had for a while."

The bill drew widespread derision from Democrats. Back in Sacramento, Gov. Brown condemned it, declaring it would "override state laws and protections, and mandate that certain water interests come out ahead of others." President Obama vowed a veto if the bill made it to his desk, claiming "it would undermine years of collaboration between local, State, and Federal stakeholders to develop a sound water quality control plan for the Bay-Delta."

Meanwhile, Feinstein went to work on a companion Senate "emergency drought" bill. The effort "started out not-so-bad," Poole says. But then, as the sausage-making process went on, it started taking on more agribusiness-friendly provisions, she says—like one that would redirect water from refuges to agricultural water districts, and another that would allow water transfers to farms to occur during critical salmon migration months—despite federal and state protections.

In May, over the fierce objections of environmental groups, Feinstein pushed her bill through the Senate by unanimous consent, avoiding a floor debate. *The San Francisco Chronicle* called it "the product of months of closed-door negotiations with various interests, including House Republicans... Bay Area Democrats, who voiced their concerns, and various stakeholders including farm groups."

The House bill's sponsors applauded, expressing confidence that the two chambers could "come up with a bill for the president to sign, so we can fix this problem."

Soon after, Feinstein's behind-the-scenes negotiations with those GOP lawmakers began. They never bore fruit, sidetracked by generalized partisan wrangling in the run-up to the November elections. But now that the election is over, Feinstein is pushing hard to ram a compromise through Congress in the lame-duck session. California's senior senator isn't the only one who refuses to reveal details of the effort. "We've taken our vow of secrecy," Rep. Valadao, who sponsored the House bill, told McClatchy news service Tuesday. Meanwhile, Tom Birmingham, general manager of the Westlands Water District, arrived in Washington this week to weigh in on the deal, McClatchy reported. The nation's largest water district, Westlands supplies irrigation water to more 1,000 square miles of ag-rich, water-poor farmland in the southern Central Valley.

Environmentalists, stung by the lack of transparency, fear the worst. Patricia Schifferle of Pacific Advocates, a long-time observer of California's water wars, notes that what's being worked out is a compromise between a House bill that is "very detrimental in terms of water-quality protections and environmental protections" and a Senate bill that's not much better—meaning that any likely compromise is likely to "take more water from the environment and give more to the west side of the southern San Joaquin [Central] Valley."

Feinstein has long-time connections to some of the biggest players in the southern Central Valley agriculture, including the Resnick family, which owns a vast agricultural empire built on pistachios, almonds, and pomegranates.

The NRDC's Poole says it's anyone's guess whether Obama would sign such a bill. She said the president would likely look to high-level California Democrats for guidance. Obama's vow to veto the House bill came after Gov. Brown's announced his fierce opposition to it, she pointed out. I asked Brown's office for the governor's take on Feinstein's latest effort. "We have not taken a position on this legislation," a spokesperson replied. I followed up to ask whether Brown or his team had seen drafts of the legislation, but got no reply.

Feinstein, it should be noted, has long-time connections to some of the biggest players in the southern Central Valley agriculture, including the Resnick family, which owns a vast agricultural empire built on pistachios, almonds, and pomegranates. According to the money-in-politics tracker

Open Secrets, the Resnicks donated \$9,800 to Feinstein's campaign in the 2011-'13 period, and \$17,900 to Rep. Valadao, the sponsor of the House bill. Westland Water District has also donated to Feinstein, Nunes, and Valadao (see its 2012 and 2014 contributions).

And Feinstein has certainly carried water, so to speak, for the Resnicks before. Back in 2009, according to the investigative website California Watch, Stewart Resnick "wrote to Feinstein, complaining that the latest federal plan to rescue the Delta's endangered salmon and smelt fisheries was 'exacerbating the state's severe drought' because it cut back on water available to irrigate crops."

Feinstein promptly forwarded Resnick's complaint to two US Cabinet secretaries, adding in her own letter that the administration should spend \$750,000 "for a sweeping re-examination of the science behind the entire Delta environmental protection plan," California Watch reported. The result: "The Obama administration quickly agreed, authorizing another review of whether restrictions on pumping irrigation water were necessary to save the Delta's fish."

Ultimately, protections for the Delta survived that maneuver. Whether they'll survive these latest machinations remains to be seen.

From: Weaver, Kiel

Sent: Thursday, November 20, 2014 11:56 AM

To: David Bernhardt; Birmingham, Thomas (tbirmingham@westlandswater.org)

Subject: Combined House Edits - CA Water Bill 11 13 14JWCOMMENTNF

Attachments: Combined House Edits - CA Water Bill 11 13 14JWCOMMENTNF.docx

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Title: To provide drought relief in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “California Drought Relief Act of 2014”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

**TITLE I—ADJUSTING DELTA SMELT MANAGEMENT
BASED ON INCREASED REAL-TIME MONITORING AND
UPDATED SCIENCE**

Sec.101.Definitions.

Sec.102.Revise incidental take level calculation to reflect new science.

Sec.103.Factoring increased real-time monitoring and updated science into ~~delta~~-Delta smelt management.

**TITLE II—ENSURING SALMONID MANAGEMENT IS
RESPONSIVE TO NEW SCIENCE**

Sec.201.Definitions.

Sec.202.Required scientific studies.

Sec.203.Process for ensuring salmonid management is responsive to new science.

Sec.204.Pilot program to protect native anadramous fish in the Stanislaus River.

Sec.205.CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.

~~Sec.206.Mark fishery and harvest management.~~

~~Sec.207.New actions to benefit Central Valley salmonids.~~

**TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT
RELIEF**

Sec.301.Findings.

Sec.302.Definitions.

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- 1 Sec.303.Operational flexibility in times of drought.
2 Sec.304.Operation of cross-channel gates.
3 Sec.305.Flexibility for export/inflow ratio.
4 Sec.306.Emergency environmental reviews.
5 Sec.307.Prioritizing State revolving funds during droughts.
6 Sec.308.Increased flexibility for regular project operations.
7 Sec.309.Temporary operational flexibility for first few storms ~~of 2015 water year~~ of the water
8 year.
9 Sec.310.Expediting water transfers.
10 ~~Sec.311.Warren Act contracts. [PLACEHOLDER]~~
11 Sec.401.Findings.
12 Sec.402.CalFed storage feasibility studies.
13 Sec.403.Water storage project construction-
14 ~~Sec.404.Other storage feasibility studies.~~
15 ~~Sec.406.Updating water operations manuals for non Federal projects.~~
16 Sec.501.Protections for State water project contractors.
17 Sec.502.Area of origin protections.
18 Sec.503.No redirected adverse impacts.
19 Sec.504.Effect on State laws.
20 Ses. 505. Sacramento River Watershed Water Service Contractors
21 TITLE VI—MISCELLANEOUS
22 Sec.601.Authorized service area.
23 ~~Sec.602.Rescheduled water.~~
24 ~~Sec.605.Water operations review panel.~~
25 Sec. 604. Implementation of Water Replacement Plan
26 Sec. 605. Natural and Artificially Spawned Species
27 Sec. 606. Amendment to Purposes
28 Sec. 607. Amendment to Definitions
29
30 Title VII. REGULATORY STREAMLINING AND WATER
31 RIGHTS.
32 Sec. 7015. Permitting Efficiencies

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Sec. 702. Payment of Certain Repayment Contracts

Sec. 7032. ~~WRDA Language~~ Bureau of Reclamation Surface Water Storage Streamlining

Sec. 7043. Environmental Procedures Streamlining

Sec. 705 Water Rights Protections

Congress finds that—

(1) As established in the Proclamation of a State of Emergency issued by the Governor of the State on January 17, 2014, the State is experiencing record dry conditions;

(2) Extremely dry conditions have persisted in the State since 2012, and the drought conditions are likely to persist into the future;

(3) As of September 2014, the National Weather Service’s forecast does not show a high likelihood of the State experiencing above-normal precipitation for the remainder of the calendar year;

(4) The water supplies of the State are at record-low levels, as indicated by the fact that all major Central Valley Project reservoir levels were at 20-35 percent of capacity as of September 25, 2014;

(5) The lack of precipitation has been a significant contributing factor to the 6,091 fires experienced in the State as of September 15, 2014, and which covered nearly 400,000 acres;

(6) According to a study released by the University of California, Davis in July 2014, the drought has led to the fallowing of 428,000 acres of farmland, loss of \$810 million in crop revenue, loss of \$203 million in dairy and other livestock value, and increased groundwater pumping costs by \$454 million. The statewide economic costs are estimated to be \$2.2 billion, with over 17,000 seasonal and part-time agricultural jobs lost;

(7) CVPIA Level II water deliveries to refuges have also been reduced by 25% in the north of Delta region, and by 35% in the south of Delta region;

(8) Only one-sixth of the usual acres of rice fields are being flooded this fall, which leads to a significant decline in habitat for migratory birds and an increased risk of disease at the remaining wetlands due to overcrowding of such birds;

(9) The drought of 2013 through 2014 constitutes a serious emergency that poses immediate and severe risks to human life and safety and to the environment throughout the State;

(10) The serious emergency described in paragraph (4) requires—

(A) immediate and credible action that respects the complexity of the water system of the State and the importance of the water system to the entire State; and

(B) policies that do not pit stakeholders against one another, which history shows only leads to costly litigation that benefits no one and prevents any real solutions;

(11) Federal law (including regulations) directly authorizes expedited decision making procedures and environmental and public review procedures to enable timely and appropriate implementation of actions to respond to the type and severity of the serious emergency described in paragraph (4); and

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(12) The serious emergency described in paragraph (4) fully satisfies the conditions necessary for the exercise of emergency decision making, analytical, and public review requirements under—

(A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(C) water control management procedures of the Corps of Engineers described in section 222.5 of title 33, Code of Federal Regulations (including successor regulations); and

(D) the Reclamation States-Emergency Drought Relief Act of 1991 (Public Law 102–250; 106 Stat. 53).

(13) The 2008 smelt biological opinion and 2009 salmonid biological opinion contain reasonable and prudent alternatives intended to avoid the likelihood of jeopardy for listed species or resulting in the destruction or adverse modification of critical habitat of listed species protect listed fish species from being jeopardized by operation of the Central Valley Project and State Water Project and to prevent adverse modification of designated critical habitat;

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(14) The effect of those reasonable and prudent alternatives in the biological opinions may restrict the amount of water pumping that can occur to deliver water for agricultural, municipal, industrial, groundwater, and refuge uses in California;

(15) Data on the difference between water demand and reliable water supplies for various regions south of the Delta, including the San Joaquin Valley, indicate there is a significant annual gap between reliable water supplies to meet agricultural, municipal and industrial, groundwater, and refuges water needs within the South of Delta and Friant Division of the Central Valley Project and the State Water Project south of the Sacramento-San Joaquin River Delta and north of the Tehachapi mountain range and the demands of those areas. This gap varies depending on the methodology of the analysis performed, but can be represented in the following ways:

(A) For Central Valley Project South-of-Delta water service contractors, if it is assumed that a water supply deficit is the difference in the amount of water available for allocation versus the maximum contract quantity, then the water supply deficits that have developed from 1992 to 2014 as a result of legislative and regulatory changes besides natural variations in hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

(B) For Central Valley Project and State Water Project water service contractors south of the Delta and north of the Tehachapi mountain range, if it is assumed that a water supply deficit is the difference between reliable water supplies, including maximum water contract deliveries, safe yield of groundwater, safe yield of local and surface supplies and long-term contracted water transfers, and water demands, including water demands from agriculture, municipal and industrial and refuge contractors, then the water supply deficit ranges between approximately 2,500,000 to 2,700,000 acre-feet.

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1 (16) Since the issuance of the biological opinions, recent studies have raised questions
2 about the benefits to endangered salmonid populations from water pumping restrictions,
3 including:

4 (A) Expert panel reviews have concluded that instantaneous water velocities in the
5 tidal Delta affect juvenile salmonids, not “tidally average” flows, as previously
6 assumed. Based on instantaneous water velocity modeling, water exports have a much
7 smaller area of effect than was previously believed;

8 (B) Tagging studies conducted since 1993 (representing more than 28 million fish)
9 demonstrate that the proportion of Sacramento Basin origin Chinook salmon entrained
10 into the pumping facilities (including pre-screen losses) are on average less than 1/10
11 of 1%; and

12 (C) Telemetric studies of Sacramento Basin and San Joaquin Basin origin
13 juvenile Chinook salmon have not demonstrated any significant adverse effect from
14 water exports on fish survival.

15 (17) Data of pumping activities at the Central Valley Project and State Water Project
16 delta pumps identifies that, on average from Water Year 2009 to Water Year 2014, take of
17 Delta smelt is 80 percent less than allowable take levels under pumping activity takes 893
18 delta Delta smelt annually with an authorized take level of 5,003 delta Delta smelt annually
19 according to the biological opinion issued December 15, 2008.
20

21 (18) Data of field sampling activities of the Interagency Ecological Program located in
22 the Sacramento-San Joaquin Estuary identifies that, on average from 2005 to 2013, the
23 program “takes” 3,500 delta smelt during annual surveys with an authorized “take” level
24 of 33,480 delta smelt annually – according to the biological opinion issued December 9,
25 1997.

26 ~~(1819)~~ It is worth exploring whether there is a way to implement the biological opinions
27 that would preserve the protections afforded listed fish and simultaneously increase water
28 deliveries to the Central Valley Project and State Water Project without weakening
29 environmental laws or protections.

30 ~~(1920)~~ In 2014, better information exists than was known in 2008 concerning conditions
31 and operations that may or may not lead to high salvage events that jeopardize the fish
32 populations, and what alternative management actions can be taken to avoid jeopardy.

33 ~~(2021)~~ Alternative management strategies, such as trapping and barging juvenile salmon
34 through the Delta, removing non-native species, enhancing habitat, ~~and~~ monitoring fish
35 movement and location in real-time, and improving water quality in the Delta can contribute
36 significantly to protecting and recovering these endangered fish species, and at potentially
37 lower costs to water supplies.

38 ~~(2122)~~ Resolution of fundamental policy questions concerning the extent to which
39 application of the Endangered Species Act affects the operation of the Central Valley
40 Project and State Water Project is the responsibility of Congress.

41 **SEC. 3. DEFINITIONS.**

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In this Act:

(1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

(2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the C.W.C. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.

Commented [A1]: This definition does not include the Contra Costa Pumping Plant because that pumping plant is not covered by these biological opinions

~~(3) JEOPARDY.—The term “jeopardy” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.~~

(4) LISTED SALMONID SPECIES.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon ~~including hatchery steelhead or salmon populations within the evolutionary significant unit (ESU) or distinct population segment (DPS).~~

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~~(5) Significant NEGATIVE IMPACT ON THE LONG-TERM SURVIVAL.—The term “significant negative impact on the long-term survival” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.~~

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(6) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(7) OMR FLOW OF -5000 CFS.—The term “OMR flow of -5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as ~~described in measured by~~

(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(8) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.

(9) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.

(10) STATE.—The term “State” means the State of California.

**TITLE I—ADJUSTING DELTA SMELT MANAGEMENT
BASED ON INCREASED REAL-TIME MONITORING AND
UPDATED SCIENCE**

SEC. 101. DEFINITIONS.

In this title:

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(1) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

(2) DELTA SMELT.—The term “~~delta~~-Delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

SEC. 102. REVISE INCIDENTAL TAKE LEVEL
CALCULATION FOR DELTA SMELT TO REFLECT NEW
SCIENCE.

(a) No later than October 1, 2015, and at least every five years thereafter, the Director of Fish and Wildlife Service, in cooperation with other federal, state, and local agencies, shall using the best scientific and commercial data available, review, and if warranted, ~~use the best scientific and commercial data available to complete a review and, if~~ warranted, a modification of modify the method used to calculate the incidental take levels for adult and larval/juvenile Delta smelt in the ~~2008 delta-smelt~~ biological opinion that takes into account all life stages, among other considerations,—

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(1) salvage information collected since at least 1993; available over at least 18 years;
(2) updated or more recently developed statistical models;
(3) updated scientific and commercial data; and
(4) the most recent information regarding the environmental factors driving ~~delta~~-Delta smelt salvage.

(b) Modified Incidental Take Level.—Unless the Director determines in writing that one or more of the requirements described in paragraphs (1) through (4) below are not appropriate, the modified incidental take level described in subsection (a) shall—

- (1) Be ~~normalized~~ for the abundance of prespawning adult Delta smelt using the Fall Midwater Trawl Index or other index;
- (2) Be based on a simulation of the salvage that would have occurred from 1993 through 2012 if OMR flow has been consistent with the smelt biological opinions;
- (3) Base the simulation on a correlation between annual salvage rates and historic water clarity and OMR flow during the adult salvage period; and
- ~~(4)~~ (4) Set the incidental take level as the 80 percent upper prediction interval derived from simulated salvage rates since at least 1993;

Commented [A2]: There is no definition of “normalized” because it is a generally accepted statistical term that the agencies should be able to discern

SEC. 103. FACTORING INCREASED REAL-TIME
MONITORING AND UPDATED SCIENCE INTO DELTA
SMELT MANAGEMENT.

(a) In General.—The ~~Secretary~~ Director shall use the best scientific and commercial

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1 data available to implement, evaluate, and refine or amend, as appropriate, the reasonable
2 and prudent alternative described in the smelt biological opinion, and any successor
3 opinions or court order. The Secretary shall make all significant decisions that implement
4 the smelt biological opinion, or any successor opinions, in writing, and shall document
5 the significant facts upon which such decisions are made, consistent with Section 706 of
6 Title 5 of the United States Code.

7 (b) Increased Monitoring to Inform Real-time Operations.— ~~Contingent upon funding,~~
8 ~~the~~ The Secretary shall conduct additional surveys, on an annual basis at the appropriate
9 time of the year based on environmental conditions, in collaboration with other ~~delta~~
10 Delta science interests.

11 (1) In implementing this section, ~~after seeking public input,~~ the Secretary shall —

12 (A) use the best available survey methods, based on accuracy, precision,
13 reliability, accommodation of multiple species, and take of listed species, for
14 the detection of Delta smelt to determine the extent that adult Delta smelt are
15 distributed in relation to certain levels of turbidity, or other environmental
16 factors that shall influence salvage rate; and

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17 (B) use the results from the survey methods described in subparagraph (A) to
18 determine how the Central Valley Project and State Water Project may be
19 operated more efficiently to minimize salvage while maximizing export
20 pumping rates without causing a negative impact on the long term survival of
21 the Delta smelt; use the most appropriate accurate survey methods available
22 for the detection of delta Delta smelt to determine the extent that adult delta
23 Delta smelt are distributed in relation to certain levels of turbidity, or other
24 environmental factors that may influence salvage rate; and

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25 (2) During the period beginning on December 1, 2014 and ending March 31, 2015,
26 and in each successive December through March period, if suspended sediment loads
27 enter the Delta from the Sacramento River and the suspended sediment loads appear
28 likely to raise turbidity levels in Old River north of the export pumps from values
29 below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the
30 Secretary shall—

31 (A) conduct daily monitoring using appropriate survey methods at locations
32 including, but not limited to, the vicinity of Station 902 to determine the extent
33 that adult Delta smelt are moving with turbidity toward the export pumps; and

34 (B) use results from the monitoring surveys referenced in paragraph (A) at
35 locations including, but not limited to, the vicinity of Station 902 to determine
36 how increased trawling can inform daily real-time Central Valley Project and
37 State Water Project operations to minimize salvage while maximizing export
38 pumping rates of water export without causing a significant negative impact on
39 the long-term survival of the Delta smelt.

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40 (c) Periodic Review of Monitoring.—Within twelve months of the date of enactment of

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1 this title, and at least once every 5 years thereafter, the Secretary shall—

2 (1) evaluate whether the monitoring program under subsection (b), combined with
3 other monitoring programs for the Delta, is providing sufficient data to inform
4 Central Valley Project and State Water Project operations to minimize salvage while
5 maximizing export pumping rates of water export without causing a significant
6 negative impact on the long-term survival of the Delta smelt; and

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7 (2) determine whether the monitoring efforts should be changed in the short- or
8 long-term to provide more useful data.

9 (d) Delta Smelt Distribution Study.—

10 (1) IN GENERAL.— No later than January 1, 2016, and at least every five years
11 thereafter, contingent upon funding, the Secretary, the Secretary, in collaboration
12 with the California Department of Fish and Wildlife, the California Department of
13 Water Resources, public water agencies, and other interested entities, Delta science
14 partners, shall evaluate and implement, as appropriate, implement new targeted
15 sampling and monitoring specifically designed to understand delta-Delta smelt
16 abundance, distribution, and the types of habitat occupied by delta-Delta smelt
17 during all life stages.

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18 (2) SAMPLING.—The Delta smelt distribution study shall, at a minimum—

19 (A) include recording water quality and tidal data;

20 (B) be designed to understand delta-Delta smelt abundance, distribution,
21 habitat use, and movements throughout the Bay-Delta, Suisun Marsh, and other
22 areas occupied by the Delta smelt during all seasons;

23 (C) consider areas not routinely sampled by existing monitoring programs,
24 including wetland channels, near-shore water, depths below 35 feet, and
25 shallow-water; and

26 (D) use the most biologically appropriate survey methods, including sampling
27 gear, best suited to collect the most accurate data for the type of sampling or
28 monitoring.

29 (e) Scientifically supported implementation of Old and Middle River flow
30 requirements.—In implementing the provisions of the smelt biological opinion, or any
31 successor biological opinion, pertaining to management of reverse flow in the Old and
32 Middle Rivers, the Secretary shall—

33 (1) consider the relevant provisions of the biological opinion or any successor
34 biological opinion;

35 (2) operating within the range provided for in the smelt biological opinion, or any
36 successor biological opinion, to minimize water supply reductions for the Central
37 Valley Project and the State Water Project, manage reverse flow in Old and Middle
38 Rivers at ~5,000 cfs unless scientific evidence developed pursuant to subparagraph

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103(c)(3) and (4) indicate a less negative OMR flow is necessary to avoid a negative impact on the long-term survival of the Delta smelt operating within the range provided for in the smelt biological opinion or any successor biological opinion, manage reverse flow in Old and Middle Rivers at -5000 cfs to minimize water supply reductions for the Central Valley Project and the State Water Project unless scientific evidence Central Valley Project and the State Water Project unless scientific evidence pursuant to Section 103(c)(3) and (4) indicate a less negative flow is necessary to avoid a negative impact on the long term survival of the Delta smelt.

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(3) document in writing any significant facts about real-time conditions relevant to the determinations of reverse OMR flow rates, including—

(A) whether targeted real-time fish monitoring in Old River pursuant to this section, including monitoring in the vicinity of Station 902, indicates that a significant negative impact on the long-term survival of the significant increase in the salvage of Delta smelt is imminent; and

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(B) whether near-term forecasts with available salvage models show under prevailing conditions that OMR flow of -5000 cubic feet per second will cause a significant negative impact on the long-term survival of the Dsignificantly increased take of delta smelt; and

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(4) show in writing that any determination to manage OMR reverse flow at rates less negative than -5000 cubic feet per second is necessary to avoid a significant negative impact jeopardizing the long-term survival of the Delta smelt, including an explanation of the data examined and the connection between those data and the choice made, after considering:

(A) the findings in paragraph (3);

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(B) whether continued project operations over the remainder of the water year would exceed the incidental take level;

(C) the potential effects of documented, quantified entrainment on subsequent smelt abundance, including consideration of the distribution of the population throughout the Delta,

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(D) the water temperature,

(E) other significant factors relevant to the determination; and

(F) whether any alternative measures could have a substantially lesser water supply impact.

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(4) for any subsequent biological opinion, make the showing required in paragraph (3) for any determination to manage OMR reverse flow at rates less negative than the upper limit in the biological opinion.

(f) Memorandum of Understanding. No later than December 1, 2014, the Commissioner and the Director ~~shall will~~ execute a Memorandum of Understanding (MOU) to ensure that the smelt biological opinion is implemented in a manner that ~~maximizes minimizes~~ water supply ~~losses~~ while complying with applicable laws and regulations. If that MOU alters any procedures set out in the biological opinion, there ~~shall will~~ be no need to reinitiate consultation if those changes do not have a ~~significant negative impact on the long term survival~~ ~~n~~ adverse effect on listed species and the implementation of the MOU would not be a major change to implementation of the biological opinion. Any change to procedures that does not create a ~~significant negative impact on the long term survival~~ new adverse effect to listed species ~~shall will~~ not alter application of the take exemption in the incidental take statement in the biological opinion under the Endangered Species Act, section 7(o)(2).

(g) Calculation of Reverse Flow in OMR.—Within ~~180 90~~ days of the enactment of this title, the Secretary is directed, in consultation with the California Department of Water Resources to revise the method used to calculate reverse flow in Old and Middle Rivers for implementation of the reasonable and prudent alternatives in the smelt biological opinion and the salmonid biological opinion, and any succeeding biological opinions, for the purpose of ~~achieving better real-time management of Old and Middle River flow and potentially~~ increasing Central Valley Project and State Water Project water supplies. The ~~method of calculating reverse flow in Old and Middle Rivers shall be reevaluated not less than every five years thereafter to facilitate real-time decisionmaking and to help achieve maximum export pumping rates within limits established by the smelt biological opinion, the salmonid biological opinion, and any succeeding biological opinions.~~

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TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

SEC. 201. DEFINITIONS.

In this title:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator of NOAA Fisheries.

(2) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

(3) Other Affected Interests. — The term “other affected interests” refers to entities and people that could be harmed by existing or alternative management measures, including the State of California, subdivisions of the State of California, public water agencies and those who benefit

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directly and indirectly from the multipurpose operations of the Central Valley Project and the State Water Project.

(4) Commissioner.—The term “Commissioner” means the Commissioner of the Bureau of Reclamation.

(5) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

SEC. 202. REQUIRED SCIENTIFIC STUDIES.

(a) Trap and Barge Pilot Project to Increase Survivals Through the Delta.—The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, water agencies, and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator ~~and the Commissioner~~ shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

(2) The Assistant Administrator ~~and the Commissioner~~ shall provide an opportunity for 30 days of public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) ~~Within 60 days of~~ Upon completion of (2), above, the Assistant Administrator ~~and the Commissioner~~ shall complete the necessary design and evaluations of the pilot program and seek such ~~authorizations and permits~~ or other regulatory authorizations as may be required under federal law for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

(4) ~~Subject to the availability of funding,~~ The Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2015 or as soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Committees on the Environment and Public Works and Energy and Natural Resources and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating

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smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203.

(6) The pilot program is hereby found to be consistent with the requirements of the Central Valley Project Improvement Act (Public Law 102-575). No provision, plan or definition established or required by the Central Valley Project Improvement Act (Public Law 102-575) shall be used to prohibit the imposition of the pilot program, or to prevent the accomplishment of its goals.

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(b) Tagging studies.

(1) IN GENERAL.—The Assistant Administrator, in collaboration with other ~~delta-Delta~~ science partners, shall implement tagging studies, including acoustic telemetry and PIT tagging studies as appropriate, wherein habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed. Studies may also be conducted to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—The sampling—

(A) shall include recording water quality and tidal data;

(B) will be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of through Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) will supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers which the Assistant Administrator determines are crucial for trend monitoring.

(c) The Assistant Administrator shall ~~assess and review through the adaptive management procedures in the salmonid biological opinion recommendations from Central Valley Project and State Water Project service area water contractors on studies of other alternative management measures that may increase the survival of listed salmonid species and implement alternative management measures the Assistant Administrator determines are appropriate.~~

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SEC. 203. PROCESS FOR ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.

(a) General directive. The reasonable and prudent alternative described in the salmonid biological opinion allows for and anticipates adjustments in project operation parameters to reflect the best scientific and commercial data currently available, and authorizes efforts to test and evaluate improvements in operations that will meet applicable regulatory requirements and maximize water supply reliability. Implementation of the reasonable and prudent alternative described in the salmonid biological opinion shall be adjusted accordingly as new scientific and commercial data are developed. The Commissioner and the Assistant Administrator shall fully utilize these authorities as described below.

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(b) Annual reviews of certain project operations. No later than December 31, 2015, and at least annually thereafter,

(1) The Commissioner, ~~in consultation with and~~ with the assistance of the Assistant Administrator, shall ~~commence annual efforts to~~ examine and identify adjustments to the initiation of Action IV.2.3 pertaining to negative OMR flows, subject to paragraph (5).

(2) The Commissioner, ~~in consultation with and~~ with the assistance of the Assistant Administrator, shall examine and identify adjustments in the timing, triggers or other operational details relating to the implementation of pumping restrictions in Action IV.2.1 pertaining to the inflow to export requirements, subject to paragraph (5).

(3) Pursuant to the ~~consultation and~~ assessments carried out under paragraphs (1) and (2) of this subsection, the Commissioner ~~and the Assistant Administrator~~ shall ~~jointly~~ make recommendations to the ~~Assistant Administrator~~ Secretary of the Interior and to the Secretary of Commerce ~~secretaries~~ on adjustments to project operations that, in the exercise of the adaptive management provisions of the salmonid biological opinion, ~~can improve water supplies will reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project~~ and are consistent with the requirements of applicable law and as further described in subsection (c).

(4) The Secretary of Commerce and the Secretary of the Interior shall direct the Commissioner ~~and Assistant Administrator~~ to implement recommended adjustments to project operations for which the conditions under subsection (c) are met.

(5) The Assistant Administrator and the Commissioner shall review and identify adjustments to project operations with water supply restrictions in any successor biological opinion to the salmonid biological opinion, applying the provisions of this section to those water supply restrictions where there are references to Actions IV.2.1 and IV.2.3.

(c) ~~Adjustments to project operations that shall be implemented. After In receiving reviewing the recommendations under subsection (b), the Secretary of the Interior and the Secretary of Commerce secretaries shall direct the Commissioner and the Assistant Administrator to implement those operational adjustments, or any recommendations the Assistant Administrator shall evaluate the effects of the recommended adjustments on listed species and shall recommend to the Commissioner adjustments for combination, for which, in aggregate:~~

(1) the net effect on listed species is equivalent to those of the underlying project operational parameters criteria in the salmonid biological opinion, taking into account both

(i) efforts to minimize the adverse effects of the adjustment to project operations; and

(ii) whatever additional actions or measures may be implemented in conjunction with the adjustments to operations to offset the adverse effects to listed species, consistent with (d), that are in excess of the adverse effects of the underlying operational parameters, if any; and mitigate its effects; and

(1)(2) the effects of the adjustment can be reasonably expected to fall within the incidental take authorizations.

(d) ~~Taking into account offsetting species survival benefits from other measures.~~

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(1) When examining and identifying opportunities to offset the potential adverse effect of adjustments to operations under subsection (c)(1)(ii) operating criteria, the Commissioner and the Assistant Administrator shall take into account the potential salmonid species survival improvements that are likely to result from other measures which, if implemented in conjunction with such the adjustments, would offset the adverse effects, if any of the adjustments. When evaluating considering offsetting measures, the Commissioner and the Assistant Administrator shall consider the type, timing and nature of the adverse effects, if any, to specific species and ensure that the measures likely provide equivalent overall benefits to the listed species in the aggregate, as long as the change will not cause a significant negative impact on the long-term survival of a listed salmonid species in survival rates for each species remains consistent with the Endangered Species Act and implementing regulations.

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(e) Framework for examining opportunities to minimize or offset the potential adverse effect of adjustments to operations operating criteria.—Not later than December 31, 2015, and every five years thereafter, the Assistant Administrator shall, in collaboration with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) with-through restrictions on export pumping rates restrictions as specified by Action IV.2.3 as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) with-through San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1 as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) by-through a trap and barge program based on the experience of other systems to the extent they are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through the installation of temporary barriers, the management of Cross Channel Gates operations, and other projects affecting flow in the Delta;

(7) by-through salvaging fish that may behave been entrained near the entrance to Clifton Court Forebay; and

(8) through any other management measures that may provide equivalent or better protections for listed species while maximizing export pumping rates without causing a negative impact on the long-term survival of a listed salmonid species.

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(9) through development and implementation of conservation hatchery programs for salmon and steelhead to aid in the recovery of listed salmon and steelhead species.

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(f) Survival estimates.

(1) ~~To the maximum extent feasible, the Assistant Administrator shall make these quantitative estimates of survival and determinations quantitatively to the maximum extent feasible,~~ such as a range of percentage increases in through-Delta survival that could result from the management measures, and if the scientific information is lacking for quantitative estimates, shall do so on qualitative terms based upon the best available science.

(2) If the Assistant Administrator provides qualitative survival estimates ~~of the benefits to the for a~~ species resulting from one or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in subsection (e) in terms of their most likely expected contribution to increased through-Delta survival relative to the other measures.

(3) If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued ~~the and~~ estimates of increased through-Delta survival benefits from different management measures pursuant to subsection (e), the Secretary shall compare the protections ~~benefits~~ to the species from different management measures based on the best scientific and commercial data available at the time.

(g) Comparison of adverse consequences for alternative management measures of equivalent ~~equal protection for a species benefit to the salmon.~~ —

(1) For the purposes of this subsection and subsection (c) —

(A) The alternative management measure or combination of alternative management measures identified in paragraph (2) shall be known as the “equivalent alternative measure.”

(B) The existing measure or measures identified in subparagraphs (2)(A),(B),(C), or (D) shall be known as the “equivalent existing measure.”

(C) An “equivalent increase in through-Delta survival rates for listed salmonid species” shall mean an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not ~~necessarily~~ the same change for each individual species, as long as the change in survival rates will not cause a significant negative impact on the long-term survival of a listed salmonid species for each species remains consistent with the Endangered Species Act and implementing regulations.

(2) As part of the reviews of project operations pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures listed in subsection (e)(3) through (8) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) through restrictions on export pumping rates with export restrictions as specified by Action IV.2.3, as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable;

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(B) through restrictions on export pumping rates as specified by Action IV.2.3, as compared to a modification of Action IV.2.3 that would provide additional water supplies, other than that described in subparagraph (A);

(C) through with San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, or

(D) through with San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to a modification of Action IV.2.1 that would reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project, provide additional water supplies, other than that described in subparagraph (C).

(3) If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether

(A) it is technically feasible and within federal jurisdiction to implement the equivalent alternative measure, and or

(B) it is technically feasible to implement the alternative measure and the Assistant Administrator certifies that state or local agencies or other entities have agreed to implement it; the State of California, or subdivision thereof, or local agency with jurisdiction has certified in writing to the Assistant Administrator that it has the authority and capability to implement the pertinent equivalent alternative measure, and/or

(C) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) If the Assistant Administrator makes the findings in subparagraph (3)(A) and (B), the Assistant Administrator and the Commissioner shall adjust project operations the operating criteria in the salmonid biological opinion pursuant to this subsection to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase export rates of pumping water supplies to the greatest extent possible while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

(h) Tracking adverse effects beyond the range of effects accounted for in the salmonid biological opinion and coordinated operation with the smelt biological opinion.

(1) Among the adjustments to the project operations operational criteria considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall

(A) Evaluate the effects on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) Consider requiring that before some or all of the provisions of Actions IV.2.1. or IV.2.3 are imposed in any specific instance, the Assistant Administrator show that the implementation of these provisions in that specific instance is necessary to avoid a

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negative impact on the long-term survival of a listed salmonid species.

(2) The Assistant Administrator, the Director and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt and salmonid biological opinions, in order to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the biological opinions.

(i) Real-Time Monitoring and Management. The Assistant Administrator and the Commissioner shall, through the NMFS adaptive management salmonid biological opinion provisions, analyze whether date-certain triggers that limit OMR reverse flow to -5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids. If the analysis shows that the use of real-time information to trigger OMR flow limitations would improve water supply without causing a significant negative impact on the long-term survival of significant adverse effects to Winter-run Chinook salmon, then such real-time management triggers shall be implemented.

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(j) If the quantitative estimates of through-Delta survival established by the Secretary for the management measures in (b)(2) exceed the through-Delta survival established for the RPAs, the Secretary shall evaluate and implement the management measures in (b)(2) as a prerequisite to implementing the RPAs contained in the BiOps.

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(k) Consistent with Section 706 of Title 5 of the United States Code, decisions of the Assistant Administrator and the Commissioner described in paragraphs (b) through (j) of Section 203 shall be made in writing, on the basis of best scientific and commercial data currently available, and shall document the significant facts upon which such decisions are made.

SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN THE STANISLAUS RIVER.

(a) Establishment of Non-native Predator Fish Removal Program- The Assistant Administrator and districts, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall jointly develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes from the Stanislaus River. The pilot program shall--

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(1) be scientifically based;

(2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;

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1 (3) among other methods, use wire fyke trapping, portable resistance board weirs, and
2 boat electrofishing, which are among the most effective predator collection techniques
3 that minimize effects to native anadromous fish;

4 (4) be developed, including the application for all necessary scientific research and
5 species enhancement permits under section 10(a)(1) of the Endangered Species Act of
6 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6
7 months after the date of the enactment of this Act;

8 (5) be implemented as quickly as possible following the issuance of all necessary
9 scientific research and species enhancement permits needed to begin the pilot program;
10 and

11 (6) be implemented for a period of seven consecutive calendar years.

12 (b) Management- The management of the pilot program shall be the joint responsibility of the
13 Assistant Administrator and the districts. Such parties shall work collaboratively to ensure the
14 performance of the pilot program, and shall discuss and agree upon, among other things, changes
15 in the structure, management, personnel, techniques, strategy, data collection, reporting and
16 conduct of the pilot program.

17 (c) Conduct-

18 (1) IN GENERAL- At the election of the districts, the pilot program may be conducted
19 by their own personnel, qualified private contractors hired by the districts, personnel of,
20 on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.

21 (2) PARTICIPATION BY NOAA FISHERIES- In the event the districts elect to conduct
22 the program using their own personnel or qualified private contractors hired by them, the
23 Assistant Administrator has the option to assign an employee of, on loan to, or otherwise
24 assigned to NOAA Fisheries, to be present for all activities performed in the field. Such
25 presence shall ensure compliance with the agreed upon elements specified in subsection
26 (b). The districts shall pay 100 percent of the cost of such participation as specified in
27 subsection (d).

28 (3) TIMING OF ELECTION- The districts shall notify the Assistant Administrator of
29 their election on or before October 15 of each calendar year of the pilot program, which
30 election shall apply to the work performed in the subsequent calendar year.

31 (d) Funding-

32 (1) CONTRIBUTED FUNDS- The Assistant Administrator is authorized to receive and
33 expend contributed funds for the purposes for which the funds contributed in a like
34 manner as if said sums had been specifically appropriated for said purposes.

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1 (2) ANNUAL FUNDING- The districts shall be responsible through contributed funds
2 for 100 percent of the cost of the pilot program. On or before December 1 of each year of
3 the pilot program, the Assistant Administrator shall submit to the districts an estimate of
4 the cost to be incurred by the NOAA Fisheries in the following calendar year, if any,
5 including the cost of any data collection and posting under subsection (e). If an amount
6 equal to the estimate is not provided through contributed funds, or any other fund as
7 directed by the Assistant Administrator, by the districts on or before December 31 of
8 each year, (a) the NOAA Fisheries shall have no obligation to conduct the pilot program
9 activities otherwise scheduled, and (b) the districts shall be prohibited from conducting
10 any aspect of the pilot program, until full payment is made by the districts.

11 (3) ACCOUNTING- On or before September 1 of each calendar year, the Assistant
12 Administrator shall provide an accounting of the prior calendar year's expenses to the
13 districts. If the estimate paid by the districts was less than the actual costs incurred by the
14 NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay
15 the difference to the fund indentified by the Assistant Administrator in subsection (d)(1),
16 or NOAA Fisheries shall have no obligation to conduct the pilot program activities
17 otherwise scheduled. If the estimate paid by the districts was greater than the actual costs
18 incurred by the NOAA Fisheries, then a credit shall be provided to the districts, which
19 shall be deducted from the estimate payment the districts must make for the work
20 performed by the NOAA Fisheries, if any, in the next calendar year.

21 Administrator, by the districts on or before December 31 of each year, (a) the NOAA
22 Fisheries shall have no obligation to conduct the pilot program activities otherwise
23 scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot
24 program, until full payment is made by the districts.

25 (e) Reporting and Evaluation-

26 (1) IN GENERAL- On or before the 15th day of each month, the Assistant Administrator
27 shall post on the website of the NOAA Fisheries a tabular summary of the raw data
28 collected in the prior month.

29 (2) REPORT- On or before June 30 of the calendar year following the completion of the
30 program, the Assistant Administrator and districts shall jointly publish a peer reviewed
31 report that--

32 (A) discusses the findings and conclusions of the pilot program;

33 (B) synthesizes the data collected under paragraph (1); and

34 (C) makes recommendations for further study and action.

35 (f) Permits Process-

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(1) Not later than 180 days after filing of an application Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 153(9)(a)(1)), for the performance of the pilot program.

(3) All permits issued shall be in the name of the NOAA Fisheries and the districts.

(4) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(5) The pilot program, including amendments thereto by the appropriate Federal and State agencies, shall constitute a conservation plan that complies with the requirements of section 10(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)).

(g) NEPA.--Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not apply with respect to section 402 and the issuance of any permit under this subsection during the seven year period beginning on the date of the implementation of the pilot program.

(h) Emergency Environmental Reviews – To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the ~~Commerce~~ ~~Interior~~ shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(i) Definitions- For the purposes of this section:

(1) ASSISTANT ADMINISTRATOR- The term 'Assistant Administrator' means the Assistant Administrator of National Oceanic and Atmospheric Administration, NOAA Fisheries

(2) DISTRICTS- The term 'districts' means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

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(3) PILOT PROGRAM- The term `program' means the pilot non-native predator removal program established under this section.

(j) Sunset- The authorities provided under this section shall expire seven years after the implementation of the pilot program.

(a) FINDINGS.—Congress finds that—

(1) The Sacramento-San Joaquin Bay Delta and its Tributaries-

(A) is one of the largest and most diverse estuaries in the United States,

(B) is a natural treasure and a vital link in California's water system, and

(C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and

(D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.

(2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento-San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed's ecosystem.

(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.

(5) If threats by nonnative species to native fish species are not addressed, there is a probability that native species of the Sacramento-San Joaquin Bay-Delta watershed's pelagic and anadromous community will go extinct.

(6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.

(7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

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(1) Not later than January 1, 2016, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention, control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts, in consultation with the Secretary of Commerce, shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

- (i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and
- (ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and
- (iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) Phase 2. The Secretary of the Interior, in consultation with the Secretary of Commerce, shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 204, including known hotspots of predator aggregation or activity, such as:

- (i) Clifton Court Forebay,
- (ii) Central Valley Project intakes,
- (iii) Head of Old River,
- (iv) Georgiana Slough,
- (v) Old and Middle Rivers,
- (vi) Franks Tract,
- (vii) Paintersville Bridge,
- (viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (ix) Human-made submerged structures, and
- (x) Salvage release sites.

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(C) Phase 3. If determined to be effective, the Secretary of the Interior, and the Secretary of Commerce, shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

(A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,

(B) water quality, and

(C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(5) After the pilot projects are complete, a report describing the results of the program shall be used by the Assistant Administrator in making the survival estimates required by Section 203(f).

(c) IMPLEMENTATION. The Secretary of the Interior shall implement the CALFED program described in subpart (b) for at least a period of seven consecutive years beginning on the date of implementation.

(d) REPORTING REQUIREMENTS. The Secretary of the Interior shall provide reports to the Senate Committees on Environment and Public Works and Energy and Natural Resources and the House Committee on Natural Resources on the following:

(1) No later than January 1, 2016, a description of the projects described in subpart (b), including the application for all necessary scientific research and species enhancement permits under section 10(a) (1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the CALFED invasive species Program.

(2) Upon the completion of Phase 1 as described in subsection (b)(1)(A), a report describing its implementation and cost effectiveness.

(3) Two years after the project begins, a report describing the progress of the eradication of the nonnative species in the Sacramento-San Joaquin Bay-Delta and its tributaries and how such efforts have helped the Recovery Plans for endangered and threatened Anadromous and Pelagic Species in the Sacramento-San Joaquin Bay-Delta watershed and the associated cost effectiveness of each control measure.

(4) After the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

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(e) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

~~SEC. 206. MARK FISHERY AND HARVEST
MANAGEMENT.~~

SEC. 301. FINDINGS.

Congress finds that—

(1) Based on the congressional findings in Sec. 2 of this Act, it is appropriate and necessary for federal agencies to exercise the maximum amount of flexibility provided to them under the applicable laws and regulations to maximize delivery of water supplies while providing substantially similar levels of protection~~the same or better~~reasonable and prudent levels of protection for species.

SEC. 302. DEFINITIONS.

In this title:

(1) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(2) KLAMATH PROJECT.—The term “Klamath Project” means the Bureau of Reclamation project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(3) RECLAMATION PROJECT.—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(4) SECRETARIES.—The term “Secretaries” means—

(A) the Administrator of the Environmental Protection Agency;

(B) the Secretary of Agriculture;

(C) the Secretary of Commerce; and

(D) the Secretary of the Interior.

(5) STATE WATER PROJECT.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

(6) State.—The term “State” means the State of California.

SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT.

(a) Water Supplies.—

(1) IN GENERAL.—~~In response to a declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect~~For the period of time such that in any year that the Sacramento Valley Index is 6.5 or lower, or at the request of the State of California, and until the average annual delivery capability of the Central Valley Project and State Water Project has been restored for two succeeding water years following either of those events ~~have been completed where the final Sacramento Valley Index is 7.0 or greater~~, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, ~~and refuge~~ service and repayment contractors, State Water Project contractors, and any other tribe, locality, ~~water agency~~, or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State.

(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) do not result in a negative impact on the long-term survival of listed species within the Delta and provide benefits or have a neutral impact on in-Delta water user water quality; and

(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a complete written request for water transfer associated with voluntarily fallowing nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and

(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the

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fallowing and associated water transfer are in compliance with applicable Federal ~~and~~
~~State~~ laws (including regulations);

(3) adopt a 1:1 inflow to export ratio ~~for the increment of increased flow of the San~~
~~Joaquin River~~, as measured as a 3-day running average at Vernalis during the period
beginning on April 1, and ending on May 31, ~~absent a determination in writing that a more~~
~~restrictive inflow to export ratio is required to avoid a significant negative impact on the~~
~~long-term survival of a listed salmonid species; provided that the 1:1 inflow to export ratio~~
~~shall apply for the increment of increased flow of the San Joaquin River~~ resulting from the
voluntary ~~sale, transfers, or and~~ exchanges of water ~~from agencies with rights to divert~~
water from the San Joaquin River or its tributaries ~~supplies~~, on the condition that a proposed
transfer or exchange under this paragraph may only proceed if the Secretary of the Interior
determines that the environmental effects of the proposed ~~sale, transfer, or exchange~~ are
consistent with effects permissible under applicable law (including regulations), ~~and~~ and
provided that Delta conditions are suitable to allow movement of the ~~acquired,~~
~~transfer~~ ~~transferred, or exchanged~~ water through the Delta consistent with ~~the Central Valley~~
~~Project's and the State Water Project's Reclamation's~~ permitted water rights.

~~-(4) allow and facilitate, consistent with existing priorities, water transfers through the~~
~~C.W. "Bill" Jones Pumping Plant or the Harvey O. Banks Pumping Plant from April 1 to~~
~~November 30 provided water transfers comply with state and federal law, including the~~
~~California Environmental Quality Act. Notwithstanding limitations on water transfers~~
~~established by the United States Bureau of Reclamation's Biological Assessment dated~~
~~August 2008, the smelt biological opinion, salmonid biological opinion, or any amendments~~
~~to the foregoing, water transfers through the C.W. "Bill" Jones Pumping Plant or the~~
~~Harvey O. Banks Pumping Plant may occur during any month provided water transfers~~
~~comply with state law, including the California Environmental Quality Act~~

~~and~~

(1) IN GENERAL.—On request by the Governor of the State, the heads of Federal agencies
shall use the expedited procedures under this subsection to make final decisions relating to
a Federal project or operation, ~~or to local or State projects or operations that require~~
~~decisions by the Secretary of the Interior or the Secretary of Commerce to provide~~
~~additional water supplies~~ if the project's or operation's purpose is to provide relief for
emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request by the Governor of the State, the head of a Federal
agency referenced in paragraph (1), or the head of another Federal agency responsible
for carrying out a review of a project, as applicable, the Secretary of the Interior shall
convene a final project decision meeting with the heads of all relevant Federal agencies
to decide whether to approve a project to provide relief for emergency drought
conditions.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested
under subparagraph (A) not later than 7 days after the date on which the meeting
request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the

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Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project, subject to subsection (e)(2).

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

(f) Drought Plan. ~~For the period of time such that in any year that the Sacramento Valley index is 6.5 or lower, or at the request of the State of California, and until the average annual delivery capability of the Central Valley Project and State Water Project has been restored for two succeeding years following either of those events~~

The Secretaries of Commerce and the Interior, in consultation with appropriate State officials, shall develop a drought operations plan that is consistent with the provisions of this section and other provisions of this Act intended to that is consistent with the provisions of this section and other provisions of this Act intended to that is consistent with the provisions of this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the current drought.

SEC. 304. OPERATION OF CROSS-CHANNEL GATES.

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenal salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State, ~~and until two subsequent normal or above normal water years have been recorded within the Central Valley Project and for the period of time such that in any year that the Sacramento Valley index is 6.5 or lower, or at the request of the State of California, and until the average annual delivery capability of the Central Valley Project and State Water Project has been restored for two succeeding years following either of those events have been completed where the final Sacramento Valley index is 7.8 or greater,~~ consistent with operational criteria and monitoring criteria developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations

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associated with it;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2015, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the extent to which the gates are able to remain open.

(b) Recommendations.—After assessing the information collected under subsection (a), the Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternative contained in the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, that are likely to produce water supply benefits without causing a negative impact on the long-term survival of the listed species within the Delta or negatively affecting water quality. The Secretary shall also coordinate with the State Water Resources Control Board to seek consistent direction for the operation of the Delta Cross-Channel Gates under federal and state law, including Water Right Decision 1641.

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SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.

~~In response to the declaration of a state of drought emergency by the Governor of California~~
~~For the period of time such that in any year that the Sacramento Valley index is 6.5 or lower, or~~
~~at the request of the State of California, and until the average annual delivery capability of the~~
~~Central Valley Project and State Water Project has been restored for two succeeding years~~
~~following either of those events, have been completed where the final Sacramento Valley index~~
~~is 7.8 or greater, and for the period of time such a drought declaration remains in effect, the~~
~~Commissioner of the Bureau of Reclamation the Central Valley Project, in coordination with the~~
~~State Water Project may shall~~ continue to vary the averaging period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control Board decision D1641, ~~approved~~
~~in the March Temporary Urgency Change Order —~~

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(1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the rising limb of a Delta inflow hydrograph; and

(2) to operate to a 14 day averaging period on the falling limb of the Delta inflow

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hydrograph.

SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.

To minimize the time spent carrying out environmental reviews and to deliver water quickly that is needed to address emergency drought conditions in the State during the duration of an emergency drought declaration, the head of each applicable Federal agency shall, in carrying out this Act, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency.

SEC. 307. PRIORITIZING STATE REVOLVING FUNDS DURING DROUGHTS.

(a) In General.—This section shall apply for each of the fiscal years during which an emergency drought declaration of the State is in effect.

(b) The Administrator of the Environmental Protection Agency, in implementing the processes and programs under the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for those projects that are eligible to receive assistance under section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2)),

(1) issue a determination of waivers within 30 days of the conclusion of the informal public comment period pursuant to section 436(c) of title IV of division G of Public Law 113–76; and

(2) authorize, at the request of the State, 40-year financing for assistance under section 603(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(f)(2)).

(c) Effect of Section.—Nothing in this section authorizes the Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) for any other State.

SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.

The Secretaries shall, consistent with applicable laws (including regulations)—

~~(1)~~

~~(1) to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards~~

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(3) in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State and elsewhere;

(4) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

(45) manage reverse flow in the Old and Middle Rivers ~~at -5,000 cfs as prescribed by the smelt biological opinions issued by the United States Fish and Wildlife Service on December 15, 2008, for Delta smelt and by the National Marine Fisheries Service on June 4, 2009, for and the salmonids biological opinion~~, or any successor biological opinions, to ~~maximizeminimize water supply reductions~~ for the Central Valley Project and the State Water Project, ~~and issue guidance no later than December 31, 2015 directing their employees to take all steps necessary to manage flow in accordance with this paragraph. Reductions in pumping to levels less negative than -5,000 cfs may be made subject to Sections 103(e)(3) and (4).~~

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(56) as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper Division shall be with or to the respective State; and

(67) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

**SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY
FOR FIRST FEW STORMS OF DROUGHT THE WATER
YEARS OF 2015 WATER YEAR.**

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(a) Findings:

(1) During the 2014 water year, operations of the Central Valley Project and the State Water Project, the incidental take of adult Delta smelt was zero; of juvenile Delta smelt, 78 (7.7% of the incidental take ~~limitlevel~~); of winter run chinook, 339 (1.4% of the incidental take ~~limitlevel~~); of spring run chinook, zero; and of steelhead, 261 (8.7% of the incidental take ~~limitlevel~~).

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(2) The Central Valley Project and State Water Project exceeded an Old and Middle River flow of -5,000 cubic feet per second over a 14-day average for brief periods after three storm events in February and March 2014, as a result of increased pumping, but did not cause substantially increased take of smelt or salmon.

(3) Hydrological conditions in dry years, such as the 2014 water year, have not triggered water pumping restrictions pursuant to the 2008 smelt biological opinion.

(4) The Secretaries should be allowed more flexibility to increase pumping levels without causing significant risk to the listed species or weakening other environmental protections.

(5) To address Given California's severe drought conditions, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise for the duration of the existing drought emergency the flexibility provided herein to capture the maximum amount of storm flows resulting from storm events when and if they occur in the 2015 water year, and provide for the diversion of water to increase water those supplies to the Central Valley Project and State Water Project so that farms, businesses, and homes in drought-stricken areas will have an opportunity to bolster their meager supplies when water is available.

(6) It is reasonable to conclude that similar conditions will exist during future drought emergencies and regulatory relief during future first few storm events must be provided.

(b) In general. For the duration of a drought emergency, Consistent with avoiding ~~any significant negative impact on the long-term survival of the short-term~~ additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act and other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in ~~negative~~ Old and Middle River flows at up to 7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for up to 21 3028 cumulative consecutive days after October 1, 2014, as described in subsection (c).

(c) Days of temporary operational flexibility. The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(d) Compliance with ESA authorizations. In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid an additional adverse effects ~~significant negative impacts on the long-term survival of a~~ ~~jeopardy on~~ listed fish species beyond the range of those authorized under the Endangered Species Act.

(e) Other environmental protections.

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year;

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(2) During the first flush of sediment out of the Delta in each water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants;

(3) This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act, in addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period.

(4) During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to insure-ensure incidental take limits-levels are not exceeded, and to identify potential negative impacts and actions, if any, necessary to mitigate any-impacts of the temporary operational flexibility to listed-species listed under the Endangered Species Act, 16 U.S.C. 1531–1544 as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531-1544; and

(5) The Commissioner is authorized to take any action, including the transfer of appropriated funds between accounts that, in the Commissioner's judgment, are necessary to mitigate the impacts of such operations as long as any such mitigation is consistent with the requirements of this section.

(f) Technical adjustments to target period. If, before temporary operational flexibility has been implemented on 21 3028 cumulative consecutive days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the 218 consecutive-cumulative days specified in subsection (b).

(g) Emergency consultation; effect on running averages.

(1) If necessary to implement the provisions of this section, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act and its implementing regulation at 50 CFR 402.05 to temporarily adjust the operating criteria under the biological opinions,

(A) solely for the 28 cumulative consecutive+ days of temporary operational flexibility—

(iA) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (d) and (e); and

(ii(B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day

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and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions, or

~~(B) for other adjustments to operating criteria or to take other urgent actions to address water supply shortages for the least amount of time or volume of diversion necessary as determined by the Commissioner.~~

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(2) Following the conclusion of the 28 cumulative days of temporary operational flexibility, the Commissioner shall not reinstitute consultation on these adjusted operations, if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act.

(h) Level of detail required for analysis. In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

~~(i) Duration. This section shall expire on September 30, 2015. This section shall apply during any water year when a gubernatorial drought declaration is in force.~~

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SEC. 310. EXPEDITING WATER TRANSFERS.

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking “In order to” and inserting the following:

“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

(A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”;

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(5) in paragraph (5) (as so designated), by adding at the end the following:

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”; and

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”

~~SEC. 311. Additional Emergency Consultation.~~

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SEC. 311. WARREN ACT CONTRACTS.

[To be supplied.]

SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of the Interior shall develop and offer to the Calaveras County

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Water District (hereafter in this section referred to as the “CCWD”) a contract enabling the CCWD store up to 100,000 acre-feet of their Stanislaus River water rights in any excess capacity of the New Melones Reservoir in accordance with the terms and conditions of the Act of February 21, 1911 (43 U.S.C. 523–525; commonly known as the “Warren Act”). This stored water may be obtained for use by CCWD at a point, or points determined convenient to the District.

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(b) OTHER TERMS AND CONDITIONS.—The terms and conditions of any contract entered into under subsection (a) shall—

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(1) be for a term of not less than 20 years; and

(2) expressly provide that—

(A) the CCWD may use any water impounded and stored in the New Melones Reservoir for any legal purpose under California law, including use within the boundaries of the

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CCWD, transfer to and reasonable and beneficial use by a person or entity not located with
in the boundaries of CCWD, and for instream use in the Stanislaus River, the San Joaquin
River, or the Sacramento-San Joaquin River
Delta; and

(B) any water impounded and stored by the district shall not be released or withdrawn if the
end of month September storage level for New Melones Reservoir is projected to be equal to or
below 300,000 acre-feet, but in such event the impounded and stored water shall be retained in
the New Melones Reservoir for use by the district in the following year, subject to the same
300,000 acre-foot minimum storage requirement, and without additional payment being required.

[To be supplied.]

TITLE IV—INCREASING WATER STORAGE

SEC. 401. FINDINGS.

Congress finds that—

(1) the record drought conditions being experienced in the State as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State;

(3) Congress authorized relevant feasibility studies for 4 water storage projects in the State, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of Public Law 108–361 (118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of Public Law 108–361 (118 Stat. 1684);

(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of Public Law 108–361 (118 Stat. 1684); and

(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of Public Law 108–361 (118 Stat.

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1684);

(4) (A) as of the date of enactment of this Act, it has been more than 10 years since the authorization of the feasibility studies referred to in paragraph (3); but

(B) complete and final feasibility studies have not been prepared for any of those water storage projects;

(5) as of August 2014, only 2 of the 4 projects referred to in paragraph (3) have completed draft feasibility studies;

(6) the slow pace of work on completion of the feasibility studies for those 4 water storage projects is—

(A) unjustified; and

(B) of deep concern; and

(7) there is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address the water challenges of the State.

SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.

(a) In General.—Notwithstanding subparagraph (B)(i) of section 103(d)(1) of Public Law 108–361 (118 Stat. 1684), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), shall complete a final feasibility study and any other applicable environmental review documents for the project described in—

(1) subparagraph (A)(i)(I) of that section by not later than December 31, 2014;

(2) subparagraphs (A)(ii)(I) and (II) of that section by not later than ~~July 31~~ November 30, 2015.

(b) Environmental Reviews.—In carrying out subsection (a), the Secretary—

(1) shall ensure that—

(A) all applicable reviews, including reviews required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), are completed as expeditiously as practicable; and

(B) the shortest applicable process under that Act is used, including in the completion of—

(i) feasibility studies;

(ii) draft environmental impact statements; and

(iii) final environmental impact statements; and

(2) shall not be required to complete a draft or final environmental impact statement if the Commissioner of Reclamation determines, and the Secretary concurs, that the project fails to meet applicable Federal cost-benefit requirements or standards.

(c) Accountability.—

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(1) If the Bureau of Reclamation determines that an environmental review document for the water storage projects referenced in of Section 103(d)(1) of P.L. 108-361 will not be completed according to the schedule specified in subsection (a), the Bureau shall notify the Senate Committee on Energy and Natural Resources, the Senate Appropriations Subcommittee on Energy and Water Development, the House of Representatives Natural Resources Committee, and the House of Representatives Transportation and Infrastructure Committee within 14 days of the determination. The notification shall include:

(A) An explanation of the delay;

(B) The anticipated length of the delay and the revised completion date;

(C) The steps that the Bureau will take to mitigate the delay, including, but not limited to, a request to reprogram existing funds appropriated to the Bureau to meet the revised completion deadline.

(2) The Bureau of Reclamation shall carry out the procedures in subsection (a) for each subsequent delay beyond the revised completion deadline.

(3) IN GENERAL.—[Subject to paragraph (2).] if the Secretary fails to complete a feasibility study or environmental review required for any water storage project referred to in subsection (a) in accordance with the schedule specified in that subsection, the amounts made available to the Policy and Administration Account of the Bureau of Reclamation for fiscal year 2015 shall be withheld and reduced by an amount equal to the product obtained by multiplying—

(A) \$20,000; and

(B) the number of weeks during the period beginning on the applicable deadline for completion of the feasibility study or environmental review and ending on the date on which the final feasibility study or environmental review is completed.

(4) DISTRIBUTION.—If the relevant feasibility study or environmental review is delayed beyond the schedule specified in subsection (a), the percentage of withheld funds that shall be released and made available to the Bureau of Reclamation on completion of the feasibility study or environmental review document shall be—

(A) in the case of a delay the duration of which is less than [or equal to] 90 days, 100 percent of the withheld funds;

(B) in the case of a delay the duration of which is more than 90 days but less than [or equal to] 180 days, 75 percent of the withheld funds;

(C) in the case of a delay the duration of which is more than 180 days but less than [or equal to] 270 days, 50 percent of the withheld funds;

(D) in the case of a delay the duration of which is more than 270 days but less than [or equal to] 1 year, 25 percent of the withheld funds; and

(E) in the case of a delay the duration of which is more than 1 year, 0 percent of the withheld funds.

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1 SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.

2 (a) The Secretary, acting through the Commissioner of the Bureau of Reclamation, may
3 partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of
4 the Water Supply Reliability and Environmental Improvement Act (Public Law 108-361) (and
5 Acts supplemental and amendatory to the Act) with local joint powers authorities formed
6 pursuant to State law by irrigation districts and other local water districts and local governments
7 within the applicable hydrologic region, to advance those projects.

8 (b) ~~PLACEHOLDER FOR AUTHORIZATION ISSUE~~ If the Secretary determines a project
9 described in Sections 402(a)(1) and (2) is feasible, the Secretary is authorized to carry out the
10 project in a manner that is substantially in accordance with the recommended plan, and subject to
11 the conditions described in the feasibility study, provided that no federal funding shall be used to
12 construct the project. Construction Authorization.—

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13 (1) IN GENERAL.—Each water storage project identified under clauses (i) and (ii) of
14 section 103(d)(1)(A) of the Water Supply, Reliability, and Environmental Improvement Act
15 (Public Law 108-361; 118 Stat. 1684) is authorized for construction on completion of the
16 required feasibility study and environmental impact statement, if the Secretary certifies in
17 writing that, based on the feasibility study and the environmental impact statement, the
18 water storage project—

19 (A) has a positive benefit-cost ratio; and

20 (B) is in the interest of the United States.

21 (2) FUNDING.—No other funds, except those amounts described in section 103(f)(2)(A)
22 of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-
23 361; 118 Stat. 1695) authorized for implementation of the Environmental Water Account
24 that are available and unobligated as of the date of enactment of this Act, shall be used to
25 pay the Federal share of the cost of construction of the water storage projects authorized by
26 this subsection.

27 (c) PRECONSTRUCTION.—With respect to a water storage project authorized by subsection (b),
28 the Secretary shall implement the shortest practicable process provided under applicable law
29 (including regulations) to complete any remaining study, assessment, consultation, or review
30 supporting commencement of construction of the project.

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35 SEC. 404 . DAM SAFETY PROJECTS WITH INCREASED

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STORAGE COMPONENT.

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

“SEC. 5B. ADDITIONAL PROJECT BENEFITS.

“(a) In General.—Notwithstanding section 3, if the Secretary, ~~in the judgment of the Secretary,~~ makes a determination described in subsection (b), the Secretary is authorized to develop any additional project benefit—

“(1) through the construction of new or supplementary works on a project in conjunction with the activities carried out by the Secretary pursuant to section 2; and

“(2) subject to the conditions described in the feasibility study relating to the project.

“(b) Description of Determination.—A determination referred to in subsection (a) is a determination by the Secretary that—

“(1) an additional project benefit, including but not limited to additional conservation storage capacity, is—

“(A) necessary; and

“(B) in the interests of the United States; and

“(2) the project benefit proposed to be carried out is—

“(A) feasible; and

“(B) not inconsistent with the purposes of this Act.

“(c) Requirements.—The costs associated with developing an additional project benefit under this section shall be—

“(1) allocated to entity or entities benefitting from the additional conservation storage capacity, subject to agreement between the state and federal funding agencies on such allocations; and

“(2) repaid in accordance with all applicable provisions of Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).”.

(b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) is amended—

~~“(1) by striking “Funds” and inserting the following:~~

“(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner of Reclamation shall submit to Congress—

~~“(1) an expansion draft environmental impact statement and feasibility study relating to the San Luis Reservoir by not later than April 1, 2016; and~~

SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

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(a) The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(i) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;

(ii) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or

(iii) requires take authorization under section 2081 for operation of the State Water Project in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion;

and as a consequence of the Department's action, Central Valley Project yield is greater than it would have been absent the Department's actions, that additional yield shall be made available to the State Water Project for delivery to State Water Project contractors to offset losses resulting from the Department's action. The Secretary shall immediately notify the Director of the California Department of Fish and Wildlife in writing if the Secretary determines that implementation of the Biological Opinions consistent with this Act reduces environmental protections for any species covered by the opinions.

SEC. 502. AREA OF ORIGIN PROTECTIONS.

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(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities and to honor water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 16, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2, Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

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(b) Any action undertaken by the Secretary or the Secretary of Commerce pursuant to both this Act and Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531, et seq.), as amended, that requires that diversions from the Sacramento River or the San Joaquin River watersheds upstream of the Delta be bypassed shall not be undertaken in a manner that alters the water rights priorities established by California law. Nothing in this Title alters the existing authorities provided to and obligations placed upon the Federal government under the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.), as amended. (c) With respect to individuals and entities with water rights on the Sacramento River, the mandates of this Section may be met, in whole or in part, through a contract with the Secretary executed pursuant to Section 14 of Public Law 76-260, 53 Stat. 1187 (43 USC § 389) that is in conformance with the Sacramento River Settlement Contracts renewed by the Secretary in 2005.

SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

- (a) The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) as amended and other applicable federal and state laws, shall not directly or indirectly result in the involuntary reduction of water supply or fiscal impacts to individuals or districts who receive water from either the State Water Project or the United States under water rights settlement contracts, exchange contracts, water service contracts, repayment contracts, or water supply contracts or cause redirected adverse water supply or fiscal impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area.
- (b) To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.
- (c) Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange contracts and settlement contracts prior to the allocation of any other Central Valley Project water.
- (d) Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing State Water Project water supply or settlement contract with the State.

SEC. 504. EFFECT ON STATE LAWS.

Nothing in this Act preempts [any state law in effect on the date of enactment of this Act] or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law including established water rights priorities. [John Watts objected to the deletion; there will be follow up discussion with Kyle Lombardi when he is available.] Nothing in this Act preempts any State law in effect on the date of enactment of this Act, including area of origin and other water rights protections.

SEC. 505. ALLOCATIONS FOR SACRAMENTO VALLEY CONTRACTORS

(a) In General.—Subject to: (i) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project; (ii) the United States' obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; (iii) the Secretary's obligation to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act, (Pub. Law 102-575,) and (iv) subsection (b), the Secretary is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

(1) Not less than 100% of their contract quantities in a "Wet" year;

(2) Not less than 100% of their contract quantities in an "Above Normal" year;

(3) Not less than 100% of their contract quantities in a "Below Normal" year that is preceded by an "Above Normal" or a "Wet" year;

(4) Not less than 50% of their contract quantities in a "Dry" year that is preceded by a "Below Normal," an "Above Normal," or a "Wet" year;

(5) In all other years not identified herein, the allocation percentage for existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed shall not be less than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors, up to 100%; provided, that nothing herein shall preclude an allocation to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed that is greater than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors;

(b) Protection of Municipal and Industrial Supplies.—Nothing in subsection (a) shall be deemed to: (i) modify any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary; (ii) affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies; (iii) affect or limit the authority of the Secretary to implement municipal and industrial water shortage policies; or (iv) affect allocations to Central Valley Project municipal and industrial contractors pursuant to such policies. Neither subsection (a) nor the Secretary's implementation of subsection (a) shall constrain, govern or affect, directly or indirectly, the operations of the Central Valley Project's American River Division or any deliveries from that Division, its units or its facilities;

(c) This section does not affect the allocation of water to Friant Division contractors and shall not result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant Division;

(d) The Secretary will direct that the United States Bureau of Reclamation develop and implement a program, within one year of enactment of this bill, to provide for the opportunity for existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed to reschedule water, provided for under their CVP water service contracts, from one year to the next;

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(e) Definitions.—In this section:

(1) The term “existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed” means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation

(2) The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40-30-30) Index.

~~SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.~~

TITLE VI—MISCELLANEOUS

SEC. 601_. AUTHORIZED SERVICE AREA.

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include the area within the boundaries of the Kettleman City Community Services District, California, as in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District, California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for water deliveries authorized under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

~~SEC. 602_. RESCHEDULED WATER.~~

(a) Report; Advisory Board.—Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory

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Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into the Restoration Fund during the preceding fiscal year.

“(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each expenditure.

“(h) Advisory Board.—

“(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board (referred to in this section as the ‘Advisory Board’), which shall be composed of 154 members appointed by the Secretary.

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—The Secretary shall appoint members to the Advisory Board that represent the various Central Valley Project stakeholders, of whom—

“(i) 3 members shall be agricultural users of the Central Valley Project;

“(ii) 2 members shall be municipal and industrial users of the Central Valley Project;

“(iii) 3 members shall be power contractors of the Central Valley Project;

“(iv) 1 member shall be a representative of a federal wildlife refuge that contracts for Central Valley Project water supplies with the Bureau of Reclamation;

“(v) 1 member shall represent nongovernmental organizations involved in the protection and restoration of California fisheries;

“(vi) 1 member shall represent the commercial fishing industry;

“(vii) 1 member shall represent the recreational fishing industry; and

“(viii) 2 members shall be appointed at the discretion of the Secretary.

“(ix) 1 member shall be an economist have expertise in the economic impact of changes to water operations.

“(B) OBSERVER.—The Secretary and the Secretary of Commerce may each designate a representative to act as an observer of the Advisory Board.

“(C) CHAIRMAN.—The Secretary shall appoint 1 of the members described in subparagraph (A) to serve as Chairman of the Advisory Board.

“(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

“(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

“(5) Vacancies.—

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(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(C) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

“(6) Removal —A Member of the Panel may be removed from office by the Secretary of the Interior.

“(7) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

“(8) DUTIES.—The duties of the Advisory Board are—

“(A) to meet not less frequently than semiannually to develop and make recommendations to the Secretary regarding priorities and spending levels on projects and programs carried out under this title;

“(B) to ensure that any advice given or recommendation made by the Advisory Board reflects the independent judgment of the Advisory Board;

“(C) not later than December 31, 2015, and annually thereafter, to submit to the Secretary and Congress the recommendations under subparagraph (A); and

“(D) not later than December 31, 2015, and biennially thereafter, to submit to Congress a report that details the progress made in achieving the actions required under section 3406.

“(9) ADMINISTRATION.—With the consent of the appropriate agency head, the Advisory Board may use the facilities and services of any Federal agency.”

“(10) Cooperation and Assistance.—

(A) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(B) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

~~SEC. 603. WATER OPERATIONS REVIEW PANEL.~~

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~~SEC. 6067056. CONTINGENCY IN EVENT OF
CONTINUING RESOLUTION FOR FISCAL YEAR 2015.~~

~~SEC. 603. YIELD ACCOUNTING~~
~~ACCOUNTING.~~

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All Central Valley Project water, except Central Valley Project water released from the Friant Division pursuant to the San Joaquin River Restoration Settlement Act (Public Law 111-11) and water released pursuant to the December 2000 Trinity River Mainstem Fishery Restoration Record of Decision, used to implement an action undertaken for a fishery beneficial purpose that was not imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing on October 30, 1992, shall be credited to the quantity of Central Valley Project yield dedicated and managed under this section, provided, that nothing herein shall affect the Secretary's duty to comply with any otherwise lawful requirement imposed on operations of the Central Valley Project under any provision of federal or state law.

Sec. 605-604 . IMPLEMENTATION OF WATER REPLACEMENT PLAN.

(a) Not later than October 1, 2015, the Secretary shall update and implement the plan required by Section 3408(j) of Title 34 of Public Law 102-575. The Secretary shall provide reports to the Congress annually describing the progress of implementing the plan required by Section 3408(j) of Title 34 of Public Law 102-575.

(2) ~~IN GENERAL, (Subject to paragraph (3)) if the Secretary fails to update and implement the plan required by paragraph (1) of this section in accordance with the schedule specified in that subsection, the amounts made available to the Policy and Administration Account of the Bureau of Reclamation for fiscal year 2015 shall be withheld and reduced by an amount equal to the product obtained by multiplying~~

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Sec. 606 . RESTORATION FUND.

Sec. 607-605 . NATURAL AND ARTIFICIALLY SPAWNED SPECIES.

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Sec. 608-606 . AMENDMENT TO PURPOSES

Section 3402 of the Central Valley Project Improvement Act (106 Stat. 4706) is amended—

(1) in subsection (f), by striking the period at the end; and

(2) by adding at the end the following:

“(g) to ensure that water dedicated to fish and wildlife purposes by this title is replaced and provided to Central Valley Project water contractors as soon as is practicable by December 31, 2018, at the lowest financial cost reasonably achievable; and

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“(h) to facilitate and expedite water transfers in accordance with this Act.”.

Sec. 609-607 . AMENDMENT TO DEFINITION

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Section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707) is amended—

(1) by amending subsection (a) to read as follows:

“(a) the term ‘anadromous fish’ means those native stocks of salmon (including steelhead) and sturgeon that, as of October 30, 1992, were present in the Sacramento and San Joaquin Rivers and their tributaries and ascend those rivers and their tributaries to reproduce after maturing in San Francisco Bay or the Pacific Ocean.”:

(2) in subsection (l), by striking “and,”

(3) in subsection (m), by striking the period and inserting “; and”, and

(4) by adding at the end the following:

“(n) the term ‘reasonable flows’ means water flows capable of being maintained taking into account competing consumptive uses of water and economic, environmental, and social factors.”

**SEC. 60. DEADLINES FOR CERTAIN AGENCY ACTIONS
IN THE ABSENCE OF AVAILABLE FUNDING.**

(a) Not later than 30 days after the date of enactment of this Act, and in any subsequent fiscal year, not later than 30 days after the date of enactment of legislation providing appropriations to the Departments of the Interior and Commerce, or the latest such legislation if such bills are enacted separately, the Secretaries of the Interior and Commerce shall submit to the Committees on Appropriations of the House of Representatives and the Senate a detailed spend plan for federal, state, and local funds that remain available for obligation or expenditure in the current fiscal year for the agency actions prescribed in sections 103(b), 103(d), 202, 204, 205, and 308(1).

(b) Not later than 30 days after submission of the spend plan required by subsection (a), following consultation with the Committees on Appropriations of the House of Representatives and the Senate, the Secretaries of the Interior and Commerce may extend the deadlines contained in sections 103(b), 103(d), 202, 204, 205, and 308(1) until the enactment of subsequent appropriations legislation for the following fiscal year if there is not sufficient funding available for obligation or expenditure for the agency actions prescribed in such sections.

TITLE VII. REGULATORY STREAMLINING.

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Commented [A17]: Instead of using “contingent upon funding” across the bill, we are using this section to address the agency’s implementation timeline in the event that funding is not available.

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SEC. 701. PERMITTING EFFICIENCIES

(a) Definitions

- (1) SECRETARY- The term `Secretary' means the Secretary of the Interior.
(2) BUREAU- The term `Bureau' means the Bureau of Reclamation.
(3) QUALIFYING PROJECTS- The term `qualifying projects' means new surface water storage projects in the States covered under the Act of June 17, 1902 (32 Stat. 388, Chapter 1093) and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.) constructed on lands administered by the Department of the Interior or the Department of Agriculture, exclusive of any easement, right-of-way, lease, or any private holding.
(4) COOPERATING AGENCIES- The term `cooperating agency' means a Federal agency with jurisdiction over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a qualifying project under applicable Federal laws and regulations, or a State agency subject to section 3(c).

(b) Establishment of lead agency and cooperating agencies.

(a) Establishment of Lead Agency- The Bureau is established as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, or other approvals or decisions required under Federal law to construct qualifying projects.

(b) Identification and Establishment of Cooperating Agencies- The Commissioner of the Bureau shall--

- (1) identify, as early as practicable upon receipt of an application for a qualifying project, any Federal agency that may have jurisdiction over a review, analysis, opinion, statement, permit, license, approval, or decision required for a qualifying project under applicable Federal laws and regulations; and
(2) notify any such agency, within a reasonable timeframe, that the agency has been designated as a cooperating agency in regards to the qualifying project unless that agency responds to the Bureau in writing, within a timeframe set forth by the Bureau, notifying the Bureau that the agency--

(A) has no jurisdiction or authority with respect to the qualifying project;

(B) has no expertise or information relevant to the qualifying project or any review, analysis, opinion, statement, permit, license, or other approval or decision associated therewith; or

(C) does not intend to submit comments on the qualifying project or conduct any review of such a project or make any decision with respect to such project in a manner other than in cooperation with the Bureau.

(c) State Authority- A State in which a qualifying project is being considered may choose, consistent with State law--

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- 1 (1) to participate as a cooperating agency; and
2 (2) to make subject to the processes of this Act all State agencies that--
3 (A) have jurisdiction over the qualifying project;
4 (B) are required to conduct or issue a review, analysis, or opinion for
5 the qualifying project; or
6 (C) are required to make a determination on issuing a permit, license, or
7 approval for the water resource project.

8 **(c) Bureau Responsibilities**

9 (a) In General- The principal responsibilities of the Bureau under this Act are to--

- 10 (1) serve as the point of contact for applicants, State agencies, Indian tribes, and
11 others regarding proposed projects;
12 (2) coordinate preparation of unified environmental documentation that will
13 serve as the basis for all Federal decisions necessary to authorize the use of
14 Federal lands for qualifying projects; and
15 (3) coordinate all Federal agency reviews necessary for project development
16 and construction of qualifying projects.

17 (b) Coordination Process- The Bureau shall have the following coordination
18 responsibilities:

19 (1) PRE-APPLICATION COORDINATION- Notify cooperating agencies of
20 proposed qualifying projects not later than 30 days after receipt of a proposal
21 and facilitate a preapplication meeting for prospective applicants, relevant
22 Federal and State agencies, and Indian tribes to--

23 (A) explain applicable processes, data requirements, and applicant
24 submissions necessary to complete the required Federal agency reviews
25 within the time frame established; and

26 (B) establish the schedule for the qualifying project.

27 (2) CONSULTATION WITH COOPERATING AGENCIES- Consult with the
28 cooperating agencies throughout the Federal agency review process, identify
29 and obtain relevant data in a timely manner, and set necessary deadlines for
30 cooperating agencies.

31 (3) SCHEDULE- Work with the qualifying project applicant and cooperating
32 agencies to establish a project schedule. In establishing the schedule, the
33 Bureau shall consider, among other factors--

34 (A) the responsibilities of cooperating agencies under applicable laws
35 and regulations;

36 (B) the resources available to the cooperating agencies and the non-
37 Federal qualifying project sponsor, as applicable;

38 (C) the overall size and complexity of the qualifying project;

39 (D) the overall schedule for and cost of the qualifying project; and

40 (E) the sensitivity of the natural and historic resources that may be
41 affected by the qualifying project.

42 (4) ENVIRONMENTAL COMPLIANCE- Prepare a unified environmental
43 review document for each qualifying project application, incorporating a single
44 environmental record on which all cooperating agencies with authority to issue

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1 approvals for a given qualifying project shall base project approval decisions.
2 Help ensure that cooperating agencies make necessary decisions, within their
3 respective authorities, regarding Federal approvals in accordance with the
4 following timelines:

5 (A) Not later than one year after acceptance of a completed project
6 application when an environmental assessment and finding of no
7 significant impact is determined to be the appropriate level of review
8 under the National Environmental Policy Act of 1969 (42 U.S.C. 4321
9 et seq.).

10 (B) Not later than one year and 30 days after the close of the public
11 comment period for a draft environmental impact statement under the
12 National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
13 when an environmental impact statement is required under the same.

14 (5) CONSOLIDATED ADMINISTRATIVE RECORD- Maintain a
15 consolidated administrative record of the information assembled and used by
16 the cooperating agencies as the basis for agency decisions.

17 (6) PROJECT DATA RECORDS- To the extent practicable and consistent with
18 Federal law, ensure that all project data is submitted and maintained in
19 generally accessible electronic format, compile, and where authorized under
20 existing law, make available such project data to cooperating agencies, the
21 qualifying project applicant, and to the public.

22 (7) PROJECT MANAGER- Appoint a project manager for each qualifying
23 project. The project manager shall have authority to oversee the project and to
24 facilitate the issuance of the relevant final authorizing documents, and shall be
25 responsible for ensuring fulfillment of all Bureau responsibilities set forth in
26 this section and all cooperating agency responsibilities under section 5.

27 **(d) Cooperating Agency Responsibilities.**

28 (a) Adherence to Bureau Schedule- Upon notification of an application for a qualifying
29 project, all cooperating agencies shall submit to the Bureau a timeframe under which
30 the cooperating agency reasonably considers it will be able to complete its authorizing
31 responsibilities. The Bureau shall use the timeframe submitted under this subsection to
32 establish the project schedule under section 4, and the cooperating agencies shall
33 adhere to the project schedule established by the Bureau.

34 (b) Environmental Record- Cooperating agencies shall submit to the Bureau all
35 environmental review material produced or compiled in the course of carrying out
36 activities required under Federal law consistent with the project schedule established
37 by the Bureau.

38 (c) Data Submission- To the extent practicable and consistent with Federal law, the
39 cooperating agencies shall submit all relevant project data to the Bureau in a generally
40 accessible electronic format subject to the project schedule set forth by the Bureau.

41 **(e) Funding to Process Permits.**

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1 (a) In General- The Secretary, after public notice in accordance with the
2 Administrative Procedures Act (5 U.S.C. 553), may accept and expend funds
3 contributed by a non-Federal public entity to expedite the evaluation of a permit of that
4 entity related to a qualifying project or activity for a public purpose under the
5 jurisdiction of the Department of the Interior.

6 (b) Effect on Permitting-

7 (1) IN GENERAL- In carrying out this section, the Secretary shall ensure that
8 the use of funds accepted under subsection (a) will not impact impartial
9 decisionmaking with respect to permits, either substantively or procedurally.

10 (2) EVALUATION OF PERMITS- In carrying out this section, the Secretary
11 shall ensure that the evaluation of permits carried out using funds accepted
12 under this section shall--

13 (A) be reviewed by the Regional Director of the Bureau of Reclamation,
14 or the Regional Director's designee, of the region in which the
15 qualifying project or activity is located; and

16 (B) use the same procedures for decisions that would otherwise be
17 required for the evaluation of permits for similar projects or activities
18 not carried out using funds authorized under this section.

19 (3) IMPARTIAL DECISIONMAKING- In carrying out this section, the
20 Secretary and the cooperating agencies receiving funds under this section for
21 qualifying projects shall ensure that the use of the funds accepted under this
22 section for such projects shall not--

23 (A) impact impartial decisionmaking with respect to the issuance of
24 permits, either substantively or procedurally; or

25 (B) diminish, modify, or otherwise affect the statutory or regulatory
26 authorities of such agencies.

27 (c) Limitation on Use of Funds- None of the funds accepted under this section shall be
28 used to carry out a review of the evaluation of permits required under subsection
29 (b)(2)(A).

30 (d) Public Availability- The Secretary shall ensure that all final permit decisions
31 carried out using funds authorized under this section are made available to the public,
32 including on the Internet.

33
34 **Sec. 7021. PREPAYMENT OF CERTAIN REPAYMENT CONTRACTS**

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35 (1) ENVIRONMENTAL IMPACT STATEMENT- The term 'environmental
36 impact statement' means the detailed statement of environmental impacts of a
37 project required to be prepared pursuant to the National Environmental Policy Act
38 of 1969 (42 U.S.C. 4321 et seq.).

39 (2) ENVIRONMENTAL REVIEW PROCESS-

40 (A) IN GENERAL- The term 'environmental review process' means the
41 process of preparing an environmental impact statement, environmental
42 assessment, categorical exclusion, or other document under the National
43

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Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for a project study.

(B) INCLUSIONS- The term `environmental review process' includes the process for and completion of any environmental permit, approval, review, or study required for a project study under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) FEDERAL JURISDICTIONAL AGENCY- The term `Federal jurisdictional agency' means a Federal agency with jurisdiction delegated by law, regulation, order, or otherwise over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a project study under applicable Federal laws (including regulations).

(4) FEDERAL LEAD AGENCY- The term `Federal lead agency' means the Bureau of Reclamation.

(5) PROJECT- The term `project' means a surface water project to be carried out or funded by the Secretary pursuant to the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).

(6) PROJECT SPONSOR- The term `project sponsor' means a State, regional, or local authority or other qualifying entity, such as a water conservation district, irrigation district, water conservancy district, or rural water district or association.

(7) PROJECT STUDY- The term `project study' means a feasibility study for a project carried out pursuant to the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).

(8) SECRETARY- The term `Secretary' means the Secretary of the Interior.

(9) SURFACE WATER STORAGE- The term `surface water storage' means any surface water reservoir or impoundment that would be owned, funded, or operated by the Bureau of Reclamation.

(b) ACCELERATION OF STUDIES.

(a) In General- To the extent practicable, a project study initiated by the Secretary, after the date of enactment of this Act, under the Reclamation Act of 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto, shall--

(1) result in the completion of a final feasibility report not later than 3 years after the date of initiation;

(2) have a maximum Federal cost of \$3,000,000; and

(3) ensure that personnel from the local project area, region, and headquarters levels of the Bureau of Reclamation concurrently conduct the review required under that section.

(b) Extension- If the Secretary determines that a project study described in subsection (a) will not be conducted in accordance with subsection (a), the Secretary, not later than 30 days after the date of making the determination, shall--

(1) prepare an updated project study schedule and cost estimate;

(2) notify the non-Federal project cost-sharing partner that the project study has been delayed; and

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(3) provide written notice to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate as to the reasons the requirements of subsection (a) are not attainable.

(c) Exception-

(1) IN GENERAL- Notwithstanding the requirements of subsection (a), the Secretary may extend the timeline of a project study by a period not to exceed 3 years, if the Secretary determines that the project study is too complex to comply with the requirements of subsection (a).

(2) FACTORS- In making a determination that a study is too complex to comply with the requirements of subsection (a), the Secretary shall consider--

(A) the type, size, location, scope, and overall cost of the project;

(B) whether the project will use any innovative design or construction techniques;

(C) whether the project will require significant action by other Federal, State, or local agencies;

(D) whether there is significant public dispute as to the nature or effects of the project; and

(E) whether there is significant public dispute as to the economic or environmental costs or benefits of the project.

(3) NOTIFICATION- Each time the Secretary makes a determination under this subsection, the Secretary shall provide written notice to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate as to the results of that determination, including an identification of the specific 1 or more factors used in making the determination that the project is complex.

(4) LIMITATION- The Secretary shall not extend the timeline for a project study for a period of more than 7 years, and any project study that is not completed before that date shall no longer be authorized.

(d) Reviews- Not later than 90 days after the date of the initiation of a project study described in subsection (a), the Secretary shall--

(1) take all steps necessary to initiate the process for completing federally mandated reviews that the Secretary is required to complete as part of the study, including the environmental review process under section 5;

(2) convene a meeting of all Federal, tribal, and State agencies identified under section 5(d) that may--

(A) have jurisdiction over the project;

(B) be required by law to conduct or issue a review, analysis, opinion, or statement for the project study; or

(C) be required to make a determination on issuing a permit, license, or other approval or decision for the project study; and

(3) take all steps necessary to provide information that will enable required reviews and analyses related to the project to be conducted by other agencies in a thorough and timely manner.

(e) Interim Report- Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Natural Resources of the House of

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Representatives and the Committee on Energy and Natural Resources of the Senate and make publicly available a report that describes--

- (1) the status of the implementation of the planning process under this section, including the number of participating projects;
- (2) a review of project delivery schedules, including a description of any delays on those studies initiated prior to the date of the enactment of this Act; and
- (3) any recommendations for additional authority necessary to support efforts to expedite the project.

(f) Final Report- Not later than 4 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and make publicly available a report that describes--

- (1) the status of the implementation of this section, including a description of each project study subject to the requirements of this section;
- (2) the amount of time taken to complete each project study; and
- (3) any recommendations for additional authority necessary to support efforts to expedite the project study process, including an analysis of whether the limitation established by subsection (a)(2) needs to be adjusted to address the impacts of inflation.

(c) EXPEDITED COMPLETION OF REPORTS.

The Secretary shall--

- (1) expedite the completion of any ongoing project study initiated before the date of enactment of this Act; and
- (2) if the Secretary determines that the project is justified in a completed report, proceed directly to preconstruction planning, engineering, and design of the project in accordance with the Reclamation Act of 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto.

(d) PROJECT ACCELERATION.

(a) Applicability-

(1) IN GENERAL- This section shall apply to each project study that is initiated after the date of enactment of this Act and for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) FLEXIBILITY- Any authority granted under this section may be exercised, and any requirement established under this section may be satisfied, for the conduct of an environmental review process for a project study, a class of project studies, or a program of project studies.

(3) LIST OF PROJECT STUDIES-

(A) IN GENERAL- The Secretary shall annually prepare, and make publicly available, a list of all project studies that the Secretary has determined--

- (i) meets the standards described in paragraph (1); and

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(ii) does not have adequate funding to make substantial progress toward the completion of the project study.

(B) INCLUSIONS- The Secretary shall include for each project study on the list under subparagraph (A) a description of the estimated amounts necessary to make substantial progress on the project study.

(b) Project Review Process-

(1) IN GENERAL- The Secretary shall develop and implement a coordinated environmental review process for the development of project studies.

(2) COORDINATED REVIEW- The coordinated environmental review process described in paragraph (1) shall require that any review, analysis, opinion, statement, permit, license, or other approval or decision issued or made by a Federal, State, or local governmental agency or an Indian tribe for a project study described in subsection (b) be conducted, to the maximum extent practicable, concurrently with any other applicable governmental agency or Indian tribe.

(3) TIMING- The coordinated environmental review process under this subsection shall be completed not later than the date on which the Secretary, in consultation and concurrence with the agencies identified under section 5(d), establishes with respect to the project study.

(c) Lead Agencies-

(1) JOINT LEAD AGENCIES-

(A) IN GENERAL- Subject to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the requirements of section 1506.8 of title 40, Code of Federal Regulations (or successor regulations), including the concurrence of the proposed joint lead agency, a project sponsor may serve as the joint lead agency.

(B) PROJECT SPONSOR AS JOINT LEAD AGENCY- A project sponsor that is a State or local governmental entity may--

(i) with the concurrence of the Secretary, serve as a joint lead agency with the Federal lead agency for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) prepare any environmental review process document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) required in support of any action or approval by the Secretary if--

(I) the Secretary provides guidance in the preparation process and independently evaluates that document;

(II) the project sponsor complies with all requirements applicable to the Secretary under--

(aa) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(bb) any regulation implementing that Act; and

(cc) any other applicable Federal law; and

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(III) the Secretary approves and adopts the document before the Secretary takes any subsequent action or makes any approval based on that document, regardless of whether the action or approval of the Secretary results in Federal funding.

(2) DUTIES- The Secretary shall ensure that--

(A) the project sponsor complies with all design and mitigation commitments made jointly by the Secretary and the project sponsor in any environmental document prepared by the project sponsor in accordance with this subsection; and

(B) any environmental document prepared by the project sponsor is appropriately supplemented to address any changes to the project the Secretary determines are necessary.

(3) ADOPTION AND USE OF DOCUMENTS- Any environmental document prepared in accordance with this subsection shall be adopted and used by any Federal agency making any determination related to the project study to the same extent that the Federal agency could adopt or use a document prepared by another Federal agency under--

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations).

(4) ROLES AND RESPONSIBILITY OF LEAD AGENCY- With respect to the environmental review process for any project study, the Federal lead agency shall have authority and responsibility--

(A) to take such actions as are necessary and proper and within the authority of the Federal lead agency to facilitate the expeditious resolution of the environmental review process for the project study; and

(B) to prepare or ensure that any required environmental impact statement or other environmental review document for a project study required to be completed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is completed in accordance with this section and applicable Federal law.

(d) Participating and Cooperating Agencies-

(1) IDENTIFICATION OF JURISDICTIONAL AGENCIES- With respect to carrying out the environmental review process for a project study, the Secretary shall identify, as early as practicable in the environmental review process, all Federal, State, and local government agencies and Indian tribes that may--

(A) have jurisdiction over the project;

(B) be required by law to conduct or issue a review, analysis, opinion, or statement for the project study; or

(C) be required to make a determination on issuing a permit, license, or other approval or decision for the project study.

(2) STATE AUTHORITY- If the environmental review process is being implemented by the Secretary for a project study within the boundaries of a State,

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the State, consistent with State law, may choose to participate in the process and to make subject to the process all State agencies that--

(A) have jurisdiction over the project;

(B) are required to conduct or issue a review, analysis, opinion, or statement for the project study; or

(C) are required to make a determination on issuing a permit, license, or other approval or decision for the project study.

(3) INVITATION-

(A) IN GENERAL- The Federal lead agency shall invite, as early as practicable in the environmental review process, any agency identified under paragraph (1) to become a participating or cooperating agency, as applicable, in the environmental review process for the project study.

(B) DEADLINE- An invitation to participate issued under subparagraph (A) shall set a deadline by which a response to the invitation shall be submitted, which may be extended by the Federal lead agency for good cause.

(4) PROCEDURES- Section 1501.6 of title 40, Code of Federal Regulations (as in effect on the date of enactment of the Bureau of Reclamation Surface Water Storage Streamlining Act) shall govern the identification and the participation of a cooperating agency.

(5) FEDERAL COOPERATING AGENCIES- Any Federal agency that is invited by the Federal lead agency to participate in the environmental review process for a project study shall be designated as a cooperating agency by the Federal lead agency unless the invited agency informs the Federal lead agency, in writing, by the deadline specified in the invitation that the invited agency--

(A)(i) has no jurisdiction or authority with respect to the project;

(ii) has no expertise or information relevant to the project; or

(iii) does not have adequate funds to participate in the project; and

(B) does not intend to submit comments on the project.

(6) ADMINISTRATION- A participating or cooperating agency shall comply with this section and any schedule established under this section.

(7) EFFECT OF DESIGNATION- Designation as a participating or cooperating agency under this subsection shall not imply that the participating or cooperating agency--

(A) supports a proposed project; or

(B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

(8) CONCURRENT REVIEWS- Each participating or cooperating agency shall--

(A) carry out the obligations of that agency under other applicable law concurrently and in conjunction with the required environmental review process, unless doing so would prevent the participating or cooperating agency from conducting needed analysis or otherwise carrying out those obligations; and

(B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the

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environmental review process in a timely, coordinated, and environmentally responsible manner.

(e) Programmatic Compliance-

(1) IN GENERAL- The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that--

(A) eliminates repetitive discussions of the same issues;

(B) focuses on the actual issues ripe for analyses at each level of review;

(C) establishes a formal process for coordinating with participating and cooperating agencies, including the creation of a list of all data that are needed to carry out an environmental review process; and

(D) complies with--

(i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) all other applicable laws.

(2) REQUIREMENTS- In carrying out paragraph (1), the Secretary shall--

(A) as the first step in drafting guidance under that paragraph, consult with relevant Federal, State, and local governmental agencies, Indian tribes, and the public on the appropriate use and scope of the programmatic approaches;

(B) emphasize the importance of collaboration among relevant Federal, State, and local governmental agencies, and Indian tribes in undertaking programmatic reviews, especially with respect to including reviews with a broad geographical scope;

(C) ensure that the programmatic reviews--

(i) promote transparency, including of the analyses and data used in the environmental review process, the treatment of any deferred issues raised by Federal, State, and local governmental agencies, Indian tribes, or the public, and the temporal and special scales to be used to analyze those issues;

(ii) use accurate and timely information in the environmental review process, including--

(I) criteria for determining the general duration of the usefulness of the review; and

(II) the timeline for updating any out-of-date review;

(iii) describe--

(I) the relationship between programmatic analysis and future tiered analysis; and

(II) the role of the public in the creation of future tiered analysis; and

(iv) are available to other relevant Federal, State, and local governmental agencies, Indian tribes, and the public;

(D) allow not fewer than 60 days of public notice and comment on any proposed guidance; and

(E) address any comments received under subparagraph (D).

(f) Coordinated Reviews-

(1) COORDINATION PLAN-

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1 (A) ESTABLISHMENT- The Federal lead agency shall, after consultation
2 with and with the concurrence of each participating and cooperating
3 agency and the project sponsor or joint lead agency, as applicable,
4 establish a plan for coordinating public and agency participation in, and
5 comment on, the environmental review process for a project study or a
6 category of project studies.

7 (B) SCHEDULE-

8 (i) IN GENERAL- As soon as practicable but not later than 45
9 days after the close of the public comment period on a draft
10 environmental impact statement, the Federal lead agency, after
11 consultation with and the concurrence of each participating and
12 cooperating agency and the project sponsor or joint lead agency, as
13 applicable, shall establish, as part of the coordination plan
14 established in subparagraph (A), a schedule for completion of the
15 environmental review process for the project study.

16 (ii) FACTORS FOR CONSIDERATION- In establishing a
17 schedule, the Secretary shall consider factors such as--

18 (I) the responsibilities of participating and cooperating
19 agencies under applicable laws;

20 (II) the resources available to the project sponsor, joint lead
21 agency, and other relevant Federal and State agencies, as
22 applicable;

23 (III) the overall size and complexity of the project;

24 (IV) the overall schedule for and cost of the project; and

25 (V) the sensitivity of the natural and historical resources
26 that could be affected by the project.

27 (iii) MODIFICATIONS- The Secretary may--

28 (I) lengthen a schedule established under clause (i) for good
29 cause; and

30 (II) shorten a schedule only with concurrence of the
31 affected participating and cooperating agencies and the
32 project sponsor or joint lead agency, as applicable.

33 (iv) DISSEMINATION- A copy of a schedule established under
34 clause (i) shall be--

35 (I) provided to each participating and cooperating agency
36 and the project sponsor or joint lead agency, as applicable;
37 and

38 (II) made available to the public.

39 (2) COMMENT DEADLINES- The Federal lead agency shall establish the
40 following deadlines for comment during the environmental review process for a
41 project study:

42 (A) DRAFT ENVIRONMENTAL IMPACT STATEMENTS- For
43 comments by Federal and States agencies and the public on a draft
44 environmental impact statement, a period of not more than 60 days after
45 publication in the Federal Register of notice of the date of public
46 availability of the draft environmental impact statement, unless--

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1 (i) a different deadline is established by agreement of the Federal
2 lead agency, the project sponsor or joint lead agency, as applicable,
3 and all participating and cooperating agencies; or
4 (ii) the deadline is extended by the Federal lead agency for good
5 cause.

6 (B) OTHER ENVIRONMENTAL REVIEW PROCESSES- For all other
7 comment periods established by the Federal lead agency for agency or
8 public comments in the environmental review process, a period of not
9 more than 30 days after the date on which the materials on which
10 comment is requested are made available, unless--

11 (i) a different deadline is established by agreement of the Federal
12 lead agency, the project sponsor, or joint lead agency, as
13 applicable, and all participating and cooperating agencies; or
14 (ii) the deadline is extended by the Federal lead agency for good
15 cause.

16 (3) DEADLINES FOR DECISIONS UNDER OTHER LAWS- In any case in
17 which a decision under any Federal law relating to a project study, including the
18 issuance or denial of a permit or license, is required to be made by the date
19 described in subsection (h)(5)(B), the Secretary shall submit to the Committee on
20 Natural Resources of the House of Representatives and the Committee on Energy
21 and Natural Resources of the Senate--

22 (A) as soon as practicable after the 180-day period described in subsection
23 (h)(5)(B), an initial notice of the failure of the Federal agency to make the
24 decision; and

25 (B) every 60 days thereafter until such date as all decisions of the Federal
26 agency relating to the project study have been made by the Federal
27 agency, an additional notice that describes the number of decisions of the
28 Federal agency that remain outstanding as of the date of the additional
29 notice.

30 (4) INVOLVEMENT OF THE PUBLIC- Nothing in this subsection reduces any
31 time period provided for public comment in the environmental review process
32 under applicable Federal law (including regulations).

33 (5) TRANSPARENCY REPORTING-

34 (A) REPORTING REQUIREMENTS- Not later than 1 year after the date
35 of enactment of this Act, the Secretary shall establish and maintain an
36 electronic database and, in coordination with other Federal and State
37 agencies, issue reporting requirements to make publicly available the
38 status and progress with respect to compliance with applicable
39 requirements of the National Environmental Policy Act of 1969 (42
40 U.S.C. 4321 et seq.) and any other Federal, State, or local approval or
41 action required for a project study for which this section is applicable.

42 (B) PROJECT STUDY TRANSPARENCY- Consistent with the
43 requirements established under subparagraph (A), the Secretary shall
44 make publicly available the status and progress of any Federal, State, or
45 local decision, action, or approval required under applicable laws for each
46 project study for which this section is applicable.

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(g) Issue Identification and Resolution-

(1) COOPERATION- The Federal lead agency, the cooperating agencies, and any participating agencies shall work cooperatively in accordance with this section to identify and resolve issues that could delay completion of the environmental review process or result in the denial of any approval required for the project study under applicable laws.

(2) FEDERAL LEAD AGENCY RESPONSIBILITIES-

(A) IN GENERAL- The Federal lead agency shall make information available to the cooperating agencies and participating agencies as early as practicable in the environmental review process regarding the environmental and socioeconomic resources located within the project area and the general locations of the alternatives under consideration.

(B) DATA SOURCES- The information under subparagraph (A) may be based on existing data sources, including geographic information systems mapping.

(3) COOPERATING AND PARTICIPATING AGENCY RESPONSIBILITIES-

Based on information received from the Federal lead agency, cooperating and participating agencies shall identify, as early as practicable, any issues of concern regarding the potential environmental or socioeconomic impacts of the project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project study.

(4) ACCELERATED ISSUE RESOLUTION AND ELEVATION-

(A) IN GENERAL- On the request of a participating or cooperating agency or project sponsor, the Secretary shall convene an issue resolution meeting with the relevant participating and cooperating agencies and the project sponsor or joint lead agency, as applicable, to resolve issues that may--

- (i) delay completion of the environmental review process; or
- (ii) result in denial of any approval required for the project study under applicable laws.

(B) MEETING DATE- A meeting requested under this paragraph shall be held not later than 21 days after the date on which the Secretary receives the request for the meeting, unless the Secretary determines that there is good cause to extend that deadline.

(C) NOTIFICATION- On receipt of a request for a meeting under this paragraph, the Secretary shall notify all relevant participating and cooperating agencies of the request, including the issue to be resolved and the date for the meeting.

(D) ELEVATION OF ISSUE RESOLUTION- If a resolution cannot be achieved within the 30-day period beginning on the date of a meeting under this paragraph and a determination is made by the Secretary that all information necessary to resolve the issue has been obtained, the Secretary shall forward the dispute to the heads of the relevant agencies for resolution.

(E) CONVENTION BY SECRETARY- The Secretary may convene an issue resolution meeting under this paragraph at any time, at the discretion

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of the Secretary, regardless of whether a meeting is requested under subparagraph (A).

(5) FINANCIAL PENALTY PROVISIONS-

(A) IN GENERAL- A Federal jurisdictional agency shall complete any required approval or decision for the environmental review process on an expeditious basis using the shortest existing applicable process.

(B) FAILURE TO DECIDE-

(i) IN GENERAL-

(I) TRANSFER OF FUNDS- If a Federal jurisdictional agency fails to render a decision required under any Federal law relating to a project study that requires the preparation of an environmental impact statement or environmental assessment, including the issuance or denial of a permit, license, statement, opinion, or other approval by the date described in clause (ii), the amount of funds made available to support the office of the head of the Federal jurisdictional agency shall be reduced by an amount of funding equal to the amount specified in item (aa) or (bb) of subclass (II), and those funds shall be made available to the division of the Federal jurisdictional agency charged with rendering the decision by not later than 1 day after the applicable date under clause (ii), and once each week thereafter until a final decision is rendered, subject to subparagraph (C).

(II) AMOUNT TO BE TRANSFERRED- The amount referred to in subclass (I) is--

(aa) \$20,000 for any project study requiring the preparation of an environmental assessment or environmental impact statement; or

(bb) \$10,000 for any project study requiring any type of review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) other than an environmental assessment or environmental impact statement.

(ii) DESCRIPTION OF DATE- The date referred to in clause (i) is the later of--

(I) the date that is 180 days after the date on which an application for the permit, license, or approval is complete; and
(II) the date that is 180 days after the date on which the Federal lead agency issues a decision on the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(C) LIMITATIONS-

(i) IN GENERAL- No transfer of funds under subparagraph (B) relating to an individual project study shall exceed, in any fiscal

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year, an amount equal to 1 percent of the funds made available for the applicable agency office.

(ii) FAILURE TO DECIDE- The total amount transferred in a fiscal year as a result of a failure by an agency to make a decision by an applicable deadline shall not exceed an amount equal to 5 percent of the funds made available for the applicable agency office for that fiscal year.

(iii) AGGREGATE- Notwithstanding any other provision of law, for each fiscal year, the aggregate amount of financial penalties assessed against each applicable agency office under this Act and any other Federal law as a result of a failure of the agency to make a decision by an applicable deadline for environmental review, including the total amount transferred under this paragraph, shall not exceed an amount equal to 9.5 percent of the funds made available for the agency office for that fiscal year.

(D) NO FAULT OF AGENCY-

(i) IN GENERAL- A transfer of funds under this paragraph shall not be made if the applicable agency described in subparagraph (A) notifies, with a supporting explanation, the Federal lead agency, cooperating agencies, and project sponsor, as applicable, that--

(I) the agency has not received necessary information or approvals from another entity in a manner that affects the ability of the agency to meet any requirements under Federal, State, or local law;

(II) significant new information, including from public comments, or circumstances, including a major modification to an aspect of the project, requires additional analysis for the agency to make a decision on the project application; or

(III) the agency lacks the financial resources to complete the review under the scheduled timeframe, including a description of the number of full-time employees required to complete the review, the amount of funding required to complete the review, and a justification as to why not enough funding is available to complete the review by the deadline.

(ii) LACK OF FINANCIAL RESOURCES- If the agency provides notice under clause (i)(III), the Inspector General of the agency shall--

(I) conduct a financial audit to review the notice; and

(II) not later than 90 days after the date on which the review described in subclause (I) is completed, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on the notice.

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(E) LIMITATION- The Federal agency from which funds are transferred pursuant to this paragraph shall not reprogram funds to the office of the head of the agency, or equivalent office, to reimburse that office for the loss of the funds.

(F) EFFECT OF PARAGRAPH- Nothing in this paragraph affects or limits the application of, or obligation to comply with, any Federal, State, local, or tribal law.

(h) Memorandum of Agreements for Early Coordination-

(1) SENSE OF CONGRESS- It is the sense of Congress that--

(A) the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process should cooperate with each other, State and local agencies, and Indian tribes on environmental review and Bureau of Reclamation project delivery activities at the earliest practicable time to avoid delays and duplication of effort later in the process, prevent potential conflicts, and ensure that planning and project development decisions reflect environmental values; and

(B) the cooperation referred to in subparagraph (A) should include the development of policies and the designation of staff that advise planning agencies and project sponsors of studies or other information foreseeably required for later Federal action and early consultation with appropriate State and local agencies and Indian tribes.

(2) TECHNICAL ASSISTANCE- If requested at any time by a State or project sponsor, the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process, shall, to the maximum extent practicable and appropriate, as determined by the agencies, provide technical assistance to the State or project sponsor in carrying out early coordination activities.

(3) MEMORANDUM OF AGENCY AGREEMENT- If requested at any time by a State or project sponsor, the Federal lead agency, in consultation with other Federal agencies with relevant jurisdiction in the environmental review process, may establish memoranda of agreement with the project sponsor, Indian tribes, State and local governments, and other appropriate entities to carry out the early coordination activities, including providing technical assistance in identifying potential impacts and mitigation issues in an integrated fashion.

(i) Limitations- Nothing in this section preempts or interferes with--

(1) any obligation to comply with the provisions of any Federal law, including--

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) any other Federal environmental law;

(2) the reviewability of any final Federal agency action in a court of the United States or in the court of any State;

(3) any requirement for seeking, considering, or responding to public comment; or

(4) any power, jurisdiction, responsibility, duty, or authority that a Federal, State, or local governmental agency, Indian tribe, or project sponsor has with respect to carrying out a project or any other provision of law applicable to projects.

(j) Timing of Claims-

(1) TIMING-

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1 (A) IN GENERAL- Notwithstanding any other provision of law, a claim
2 arising under Federal law seeking judicial review of a permit, license, or
3 other approval issued by a Federal agency for a project study shall be
4 barred unless the claim is filed not later than 3 years after publication of a
5 notice in the Federal Register announcing that the permit, license, or other
6 approval is final pursuant to the law under which the agency action is
7 taken, unless a shorter time is specified in the Federal law that allows
8 judicial review.

9 (B) APPLICABILITY- Nothing in this subsection creates a right to
10 judicial review or places any limit on filing a claim that a person has
11 violated the terms of a permit, license, or other approval.

12 (2) NEW INFORMATION-

13 (A) IN GENERAL- The Secretary shall consider new information
14 received after the close of a comment period if the information satisfies
15 the requirements for a supplemental environmental impact statement under
16 title 40, Code of Federal Regulations (including successor regulations).

17 (B) SEPARATE ACTION- The preparation of a supplemental
18 environmental impact statement or other environmental document, if
19 required under this section, shall be considered a separate final agency
20 action and the deadline for filing a claim for judicial review of the action
21 shall be 3 years after the date of publication of a notice in the Federal
22 Register announcing the action relating to such supplemental
23 environmental impact statement or other environmental document.

24 (k) Categorical Exclusions-

25 (1) IN GENERAL- Not later than 180 days after the date of enactment of this Act,
26 the Secretary shall--

27 (A) survey the use by the Bureau of Reclamation of categorical exclusions
28 in projects since 2005;

29 (B) publish a review of the survey that includes a description of--

- 30 (i) the types of actions that were categorically excluded or could be
31 the basis for developing a new categorical exclusion; and
32 (ii) any requests previously received by the Secretary for new
33 categorical exclusions; and

34 (C) solicit requests from other Federal agencies and project sponsors for
35 new categorical exclusions.

36 (2) NEW CATEGORICAL EXCLUSIONS- Not later than 1 year after the date of
37 enactment of this Act, if the Secretary has identified a category of activities that
38 merit establishing a categorical exclusion that did not exist on the day before the
39 date of enactment this Act based on the review under paragraph (1), the Secretary
40 shall publish a notice of proposed rulemaking to propose that new categorical
41 exclusion, to the extent that the categorical exclusion meets the criteria for a
42 categorical exclusion under section 1508.4 of title 40, Code of Federal
43 Regulations (or successor regulation).

44 (l) Review of Project Acceleration Reforms-

45 (1) IN GENERAL- The Comptroller General of the United States shall--

46 (A) assess the reforms carried out under this section; and

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(B) not later than 5 years and not later than 10 years after the date of enactment of this Act, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that describes the results of the assessment.

(2) CONTENTS- The reports under paragraph (1) shall include an evaluation of impacts of the reforms carried out under this section on--

(A) project delivery;

(B) compliance with environmental laws; and

(C) the environmental impact of projects.

(m) Performance Measurement- The Secretary shall establish a program to measure and report on progress made toward improving and expediting the planning and environmental review process.

(n) Categorical Exclusions in Emergencies- For the repair, reconstruction, or rehabilitation of a Bureau of Reclamation surface water storage project that is in operation or under construction when damaged by an event or incident that results in a declaration by the President of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Secretary shall treat such repair, reconstruction, or rehabilitation activity as a class of action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations (or successor regulations), if the repair or reconstruction activity is--

(1) in the same location with the same capacity, dimensions, and design as the original Bureau of Reclamation surface water storage project as before the declaration described in this section; and

(2) commenced within a 2-year period beginning on the date of a declaration described in this subsection.

(e) ANNUAL REPORT TO CONGRESS.

(a) In General- Not later than February 1 of each year, the Secretary shall develop and submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate an annual report, to be entitled 'Report to Congress on Future Surface Water Storage Development', that identifies the following:

(1) PROJECT REPORTS- Each project report that meets the criteria established in subsection (c)(1)(A).

(2) PROPOSED PROJECT STUDIES- Any proposed project study submitted to the Secretary by a non-Federal interest pursuant to subsection (b) that meets the criteria established in subsection (c)(1)(A).

(3) PROPOSED MODIFICATIONS- Any proposed modification to an authorized surface water storage project or project study that meets the criteria established in subsection (c)(1)(A) that--

(A) is submitted to the Secretary by a non-Federal interest pursuant to subsection (b); or

(B) is identified by the Secretary for authorization.

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(b) Requests for Proposals-

(1) PUBLICATION- Not later than May 1 of each year, the Secretary shall publish in the Federal Register a notice requesting proposals from non-Federal interests for proposed project studies and proposed modifications to authorized surface water storage projects and project studies to be included in the annual report.

(2) DEADLINE FOR REQUESTS- The Secretary shall include in each notice required by this subsection a requirement that non-Federal interests submit to the Secretary any proposals described in paragraph (1) by not later than 120 days after the date of publication of the notice in the Federal Register in order for the proposals to be considered for inclusion in the annual report.

(3) NOTIFICATION- On the date of publication of each notice required by this subsection, the Secretary shall--

(A) make the notice publicly available, including on the Internet; and

(B) provide written notification of the publication to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(c) Contents-

(1) PROJECT REPORTS, PROPOSED PROJECT STUDIES, AND PROPOSED MODIFICATIONS-

(A) CRITERIA FOR INCLUSION IN REPORT- The Secretary shall include in the annual report only those project reports, proposed project studies, and proposed modifications to authorized surface water storage projects and project studies that--

(i) are related to the missions and authorities of the Bureau of Reclamation;

(ii) require specific congressional authorization, including by an Act of Congress;

(iii) have not been congressionally authorized;

(iv) have not been included in any previous annual report; and

(v) if authorized, could be carried out by the Bureau of Reclamation.

(B) DESCRIPTION OF BENEFITS-

(i) DESCRIPTION- The Secretary shall describe in the annual report, to the extent applicable and practicable, for each proposed project study and proposed modification to an authorized water resources development project or project study included in the annual report, the benefits, as described in clause (ii), of each such study or proposed modification.

(ii) BENEFITS- The benefits (or expected benefits, in the case of a proposed project study) described in this clause are benefits to--

(I) the protection of human life and property;

(II) improvement to domestic irrigated water and power supplies;

(III) the national economy;

(IV) the environment; or

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(V) the national security interests of the United States.
(C) IDENTIFICATION OF OTHER FACTORS- The Secretary shall
identify in the annual report, to the extent practicable--

(i) for each proposed project study included in the annual report,
the non-Federal interest that submitted the proposed project study
pursuant to subsection (b); and

(ii) for each proposed project study and proposed modification to a
surface water storage project or project study included in the
annual report, whether the non-Federal interest has demonstrated--

(I) that local support exists for the proposed project study
or proposed modification to an authorized surface water
storage project or project study (including the surface water
storage development project that is the subject of the
proposed feasibility study or the proposed modification to
an authorized project study); and

(II) the financial ability to provide the required non-Federal
cost share.

(2) TRANSPARENCY- The Secretary shall include in the annual report, for each
project report, proposed project study, and proposed modification to a surface
water storage project or project study included under paragraph (1)(A)--

(A) the name of the associated non-Federal interest, including the name of
any non-Federal interest that has contributed, or is expected to contribute,
a non-Federal share of the cost of--

(i) the project report;

(ii) the proposed project study;

(iii) the authorized project study for which the modification is
proposed; or

(iv) construction of--

(I) the surface water storage project that is the subject of--

(aa) the water report;

(bb) the proposed project study; or

(cc) the authorized project study for which a modification is proposed; or

(II) the proposed modification to a surface water storage
development project;

(B) a letter or statement of support for the water report, proposed project
study, or proposed modification to an authorized surface water storage
development project or project study from each associated non-Federal
interest;

(C) the purpose of the feasibility report, proposed feasibility study, or
proposed modification to an authorized surface water storage project or
project study;

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(D) an estimate, to the extent practicable, of the Federal, non-Federal, and total costs of--

(i) the proposed modification to an authorized project study; and

(ii) construction of--

(I) the surface water storage development project that is the subject of--

(aa) the project report; or

(bb) the authorized project study for which a modification is proposed, with respect to the change in costs resulting from such modification; or

(II) the proposed modification to an authorized surface water storage development project; and

(E) an estimate, to the extent practicable, of the monetary and nonmonetary benefits of--

(i) the surface water storage development project that is the subject of--

(I) the project report; or

(II) the authorized project study for which a modification is proposed, with respect to the benefits of such modification;

or

(ii) the proposed modification to an authorized surface water storage development project.

(3) CERTIFICATION- The Secretary shall include in the annual report a certification stating that each feasibility report, proposed feasibility study, and proposed modification to a surface water storage project or project study included in the annual report meets the criteria established in paragraph (1)(A).

(4) APPENDIX- The Secretary shall include in the annual report an appendix listing the proposals submitted under subsection (b) that were not included in the annual report under paragraph (1)(A) and a description of why the Secretary determined that those proposals did not meet the criteria for inclusion under such paragraph.

(d) Special Rule for Initial Annual Report- Notwithstanding any other deadlines required by this section, the Secretary shall--

(1) not later than 60 days after the date of enactment of this Act, publish in the Federal Register a notice required by subsection (b)(1); and

(2) include in such notice a requirement that non-Federal interests submit to the Secretary any proposals described in subsection (b)(1) by not later than 120 days after the date of publication of such notice in the Federal Register in order for such proposals to be considered for inclusion in the first annual report developed by the Secretary under this section.

(e) Publication- Upon submission of an annual report to Congress, the Secretary shall make the annual report publicly available, including through publication on the Internet.

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(f) Definition- In this section the term ‘project report’ means a final feasibility report developed under the Reclamation Act of 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto.

Sec. 7043. Environmental Procedures Streamlining

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall carry out a water infrastructure project delivery program (referred to in this section as the “program”).

(2) ASSUMPTION OF RESPONSIBILITY.—

(A) IN GENERAL.—Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to one or more eligible water infrastructure projects described in subparagraph (B) within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ELIGIBLE WATER INFRASTRUCTURE PROJECTS.—In this section the term “eligible water infrastructure projects” means projects for which a non-Federal entity has lead responsibility for approving the overall project, including projects for which federal agency permitting is required or some federal funding is provided.

(C) ADDITIONAL RESPONSIBILITY.—If a State assumes responsibility under subparagraph (A)—

(i) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific project; but

(ii) at the request of the State, the Secretary may also assign to the State, and the State may assume, the responsibilities of the Secretary with respect to 1 or more eligible water infrastructure projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(D) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.

(E) FEDERAL RESPONSIBILITY.—Any responsibility of the Secretary not explicitly assumed by the State by written agreement under this section shall remain the responsibility of the Secretary.

(F) NO EFFECT ON AUTHORITY.—Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency, other than the Department of the Interior, under applicable law (including regulations) with respect to a project.

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(G) PRESERVATION OF FLEXIBILITY.— The Secretary may not require a State, as a condition of participation in the program, to forego project delivery methods that are otherwise permissible for projects.

(b) STATE PARTICIPATION.—

(1) PARTICIPATING STATES. — California is eligible to participate in the program.

(2) APPLICATION.—Not later than 270 days after the date of enactment, the Secretary shall amend, as appropriate, regulations that establish requirements relating to information required to be contained in an application of a State to participate in the program, including, at a minimum—

(A) the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;

(B) verification of the financial resources necessary to carry out the authority that may be granted under the program; and

(C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the program, including copies of comments received from that solicitation.

(3) PUBLIC NOTICE.—

(A) IN GENERAL.—The State that submits an application under this subsection shall give notice of the intent of the State to participate in the program not later than 30 days before the date of submission of the application.

(B) METHOD OF NOTICE AND SOLICITATION.—The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice law of the state.

(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under this section only if—

(A) the regulatory requirements under paragraph (2) have been met;

(B) the Secretary determines that the State has the capability, including financial and personnel, to assume the responsibility; and

(C) the head of the State agency having primary jurisdiction over water infrastructure matters enters into a written agreement with the Secretary described in subsection (c).

(5) OTHER FEDERAL AGENCY VIEWS.—If a State applies to assume a responsibility of the Secretary that would have required the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency before approving the application.

(c) WRITTEN AGREEMENT.—A written agreement under this section shall—

(1) be executed by the Governor or the top ranking water infrastructure official in the State who is charged with responsibility for water infrastructure construction;

(2) be in such form as the Secretary may prescribe;

(3) provide that the State—

(A) agrees to assume all or part of the responsibilities of the Secretary described in subsection (a);

(B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the State;

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(C) certifies that State laws (including regulations) are in effect that authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed;

(4) require the State to provide to the Secretary any information that the Secretary considers necessary to ensure that the State is adequately carrying out the responsibilities assigned to the State;

(5) have a term of not more than 5 years; and

(6) be renewable.

(d) JURISDICTION.—

(1) IN GENERAL.—The United States district courts shall have exclusive jurisdiction over any civil action against a State for failure to carry out any responsibility of the State under this section.

(2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary had the Secretary taken the actions in question.

(3) INTERVENTION.—The Secretary shall have the right to intervene in any action described in paragraph (1).

(e) EFFECT OF ASSUMPTION OF RESPONSIBILITY.—A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (j).

(f) LIMITATIONS ON AGREEMENTS.—Nothing in this section permits a State to assume any rulemaking authority of the Secretary under any Federal law.

(g) AUDITS.—

(1) IN GENERAL.—To ensure compliance by a State with any agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program under this section, the Secretary shall conduct—

(A) semiannual audits during each of the first 2 years of State participation; and

(B) annual audits during of the third and fourth years of State participation.

(2) PUBLIC AVAILABILITY AND COMMENT.—

(A) IN GENERAL.—An audit conducted under paragraph (1) shall be provided to the public for comment.

(B) RESPONSE.—Not later than 60 days after the date on which the period for public comment ends, the Secretary shall respond to public comments received under subparagraph (A).

(h) MONITORING. — After the fourth year of the participation of a State in the program, the Secretary shall monitor compliance by the State with the written agreement, including the provision by the State of financial resources to carry out the written agreement.

(j) TERMINATION. —

(1) TERMINATION BY SECRETARY.—The Secretary may terminate the participation of any State in the program if—

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- (A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;
- (B) the Secretary provides to the State—
- (i) notification of the determination of noncompliance; and
 - (ii) a period of at least 30 days during which to take such corrective action as the Secretary determines is necessary to comply with the applicable agreement; and
- (C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by Secretary.
- (2) TERMINATION BY THE STATE. — The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice by not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.

Section 705 Water Rights Protections.

(a) Treatment of Water Rights.

The Secretary of the Interior and the Secretary of Agriculture--

- (1) shall not condition the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on the transfer of any water right (including joint and sole ownership) directly to the United States, or any impairment of title, in whole or in part, granted or otherwise recognized under State law, by Federal or State adjudication, decree, or other judgment, or pursuant to any interstate water compact; and
- (2) shall not require any water user (including any federally recognized Indian tribe) to apply for or acquire a water right in the name of the United States under State law as a condition of the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement.

(b) Definition.

For purposes of this Act, the term 'water right' means any surface, groundwater, or storage use filed, permitted, certificated, confirmed, decreed, adjudicated, or otherwise recognized by a judicial proceeding or by the State in which the user acquires possession of the water or puts it to beneficial use. Such term shall include water rights for federally recognized Indian tribes.

c) Impacts on Existing Authorities.

- (1) Nothing in this Act limits or expands any existing legally recognized authority of the Secretaries to issue, grant, or condition any permit, approval, license, lease,

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allotment, easement, right-of-way, or other land use or occupancy agreement on Federal lands subject to their respective jurisdictions.

(2) Nothing in this Act shall in any way interfere with existing or future Bureau of Reclamation contracts entered into pursuant to Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act).

(3) Nothing in this Act shall affect the implementation of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(4) Nothing in this Act limits or expands any existing reserved water rights of the Federal Government on lands administered by the Secretary of the Interior or the Secretary of Agriculture.

(5) Nothing in this Act limits or expands authorities pursuant to sections 4(e), 10(j), or 18 of the Federal Power Act (16 U.S.C. 797(e), 803(j), and 811).

(6) Nothing in this Act limits or expands any existing reserved water right or treaty right of any federally recognized Indian tribe.

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From: Watts, John (Feinstein)
Sent: Thursday, November 20, 2014 4:34 PM
To: 'Jennifer Buckman'
CC: 'Stuart L. Somach '; 'Mitch Butler - Natural Resource Results'; towater@olaughlinparis.com; 'David Bernhardt'; Ronald D. Jacobsma; 'Steve Chedester'; jsutton@tccanal.com; Berliner, Thomas M.; Walthall, Brent; Tom Birmingham; Yeung, Felix (Feinstein); Weiland, Paul S.
Subject: Feinstein Statement on Drought Bill Negotiations

From: Feinstein Press
Sent: Thursday, November 20, 2014 6:19 PM
Subject: Feinstein Statement on Drought Bill Negotiations



For Immediate Release
November 20, 2014

Contact: Tom Mentzer
(202) 224-9629

Feinstein Statement on Drought Bill Negotiations

Washington—Senator Dianne Feinstein (D-Calif.) today released the following statement on progress toward a bipartisan bill to address California’s ongoing drought:

“Over the past several weeks I have been working closely with members of the California delegation who expressed interest in reaching a bipartisan agreement on legislation to address California’s drought crisis without violating the Endangered Species Act, the Clean Water Act or biological opinions.

“Although we have made progress, it has become clear that we will be unable to present an agreed-upon proposal before Congress adjourns this year.

“I deeply believe the people want both parties to work together, and that is the only way we will be able to enact water legislation. Claims that this has been some kind of secret process are false. In order to come up with a bill that is ready for public comment, back-and-forth negotiations and consultations are often necessary, including extensive technical assistance from federal and state agencies. That process is ongoing and we have no agreed-upon bill at this time.

“It is important to remember there is a real human face to this crisis. Some communities can no longer deliver water to homes. Thousands of residential wells have run dry. And many families lack very basic necessities like water for showers and cooking.

“California is in a state of prolonged drought, and we must come together to find ways to provide the water necessary for life and well-being. This isn’t about corporate agriculture, this is about California.

“It’s my hope that groups critical of this effort will strive to be productive rather than destructive. It’s clear that we need to get more water to our cities, businesses, farmers, households, fish and the Delta. And it’s equally important that we continue to protect wildlife and the environment. Only together will we stand a chance of agreeing on a bill that can help accomplish all of these goals.”

###

From: Nelson, Damon
Sent: Friday, November 21, 2014 11:53 AM
To: Bernhardt, David L.; Weaver, Kiel
CC: Thomas W. Birmingham (tbirmingham@westlandswater.org)
Subject: RE: 1 pm call

Sorry, I couldn't make the call.

From: Bernhardt, David L. [mailto:DBernhardt@BHFS.com]
Sent: Friday, November 21, 2014 11:39 AM
To: Weaver, Kiel; Nelson, Damon
Cc: Thomas W. Birmingham (tbirmingham@westlandswater.org)
Subject: 1 pm call

Tom and I wanted to see if you could be available for a call at 1, I know you are crashing on a variety of items, but we would like to visit before he leaves town. The call in number would be 800-████-████ pass code █████

Thank you

STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling (303)-223-1300 and delete the message. Thank you.

From: Watts, John (Feinstein)
Sent: Friday, November 21, 2014 4:05 PM
To: Bernhardt, David L.; Tom Birmingham
Subject: FW: Confidential draft proposed revisions to draft language
Attachments: bill language 11-21-14.docx

Fyi, confidential

From: Watts, John (Feinstein)
Sent: Friday, November 21, 2014 6:00 PM
To: Petersen, Scott (Scott.Petersen@mail.house.gov); Peterson, James (Feinstein); Yeung, Felix (Feinstein)
Subject: Confidential draft proposed revisions to draft language

As I mentioned on the phone, the House proposals are in redline of the underlying text, which reflects what we sent the House in early October.

The highlighted yellow and green provisions reflect changes we would propose to make to the House text. I think we can get the House to accept most of these (although certainly we will have to see). We still need to insert some changes to the House proposals on section 204 and make a couple of additional changes, but this should give you a good idea of where we are headed.

I truly hope you [all](#) enjoy your weekend.

Best,

John

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Title: To provide drought relief in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “California Drought Relief Act of 2014”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

**TITLE I—ADJUSTING DELTA SMELT MANAGEMENT
BASED ON INCREASED REAL-TIME MONITORING AND
UPDATED SCIENCE**

Sec.101.Definitions.

Sec.102.Revise incidental take level calculation to reflect new science.

Sec.103.Factoring increased real-time monitoring and updated science into ~~delta~~-Delta smelt management.

**TITLE II—ENSURING SALMONID MANAGEMENT IS
RESPONSIVE TO NEW SCIENCE**

Sec.201.Definitions.

Sec.202.Required scientific studies.

Sec.203.Process for ensuring salmonid management is responsive to new science.

Sec.204.Pilot program to protect native anadramous fish in the Stanislaus River.

Sec.205.CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.

~~Sec.206.Mark fishery and harvest management.~~

~~Sec.207.New actions to benefit Central Valley salmonids.~~

**TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT
RELIEF**

Sec.301.Findings.

Sec.302.Definitions.

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- 1 Sec.303.Operational flexibility in times of drought.
2 Sec.304.Operation of cross-channel gates.
3 Sec.305.Flexibility for export/inflow ratio.
4 Sec.306.Emergency environmental reviews.
5 Sec.307.Prioritizing State revolving funds during droughts.
6 Sec.308.Increased flexibility for regular project operations.
7 Sec.309.Temporary operational flexibility for first few storms ~~of 2015 water year~~ of the water
8 year.
9 Sec.310.Expediting water transfers.
10 ~~Sec.311.Warren Act contracts. [PLACEHOLDER]~~
11 Sec.401.Findings.
12 Sec.402.CalFed storage feasibility studies.
13 Sec.403.Water storage project construction-
14 ~~Sec.404.Other storage feasibility studies.~~
15 ~~Sec.406.Updating water operations manuals for non Federal projects.~~
16 Sec.501.Protections for State water project contractors.
17 Sec.502.Area of origin protections.
18 Sec.503.No redirected adverse impacts.
19 Sec.504.Effect on State laws.
20 Ses. 505. Sacramento River Watershed Water Service Contractors
21 TITLE VI—MISCELLANEOUS
22 Sec.601.Authorized service area.
23 ~~Sec.602.Rescheduled water.~~
24 ~~Sec.605.Water operations review panel.~~
25 Sec. 604. Implementation of Water Replacement Plan
26 Sec. 605. Natural and Artificially Spawned Species
27 Sec. 606. Amendment to Purposes
28 Sec. 607. Amendment to Definitions
29
30 Title VII. REGULATORY STREAMLINING AND WATER
31 RIGHTS.
32 Sec. 7015. Permitting Efficiencies

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Sec. 702. Payment of Certain Repayment Contracts

Sec. 7032. ~~WRDA Language~~ Bureau of Reclamation Surface Water Storage Streamlining

Sec. 7043. Environmental Procedures Streamlining

Sec. 705 Water Rights Protections

Congress finds that—

(1) As established in the Proclamation of a State of Emergency issued by the Governor of the State on January 17, 2014, the State is experiencing record dry conditions;

(2) Extremely dry conditions have persisted in the State since 2012, and the drought conditions are likely to persist into the future;

(3) As of September 2014, the National Weather Service’s forecast does not show a high likelihood of the State experiencing above-normal precipitation for the remainder of the calendar year;

(4) The water supplies of the State are at record-low levels, as indicated by the fact that all major Central Valley Project reservoir levels were at 20-35 percent of capacity as of September 25, 2014;

(5) The lack of precipitation has been a significant contributing factor to the 6,091 fires experienced in the State as of September 15, 2014, and which covered nearly 400,000 acres;

(6) According to a study released by the University of California, Davis in July 2014, the drought has led to the fallowing of 428,000 acres of farmland, loss of \$810 million in crop revenue, loss of \$203 million in dairy and other livestock value, and increased groundwater pumping costs by \$454 million. The statewide economic costs are estimated to be \$2.2 billion, with over 17,000 seasonal and part-time agricultural jobs lost;

(7) CVPIA Level II water deliveries to refuges have also been reduced by 25% in the north of Delta region, and by 35% in the south of Delta region;

(8) Only one-sixth of the usual acres of rice fields are being flooded this fall, which leads to a significant decline in habitat for migratory birds and an increased risk of disease at the remaining wetlands due to overcrowding of such birds;

(9) The drought of 2013 through 2014 constitutes a serious emergency that poses immediate and severe risks to human life and safety and to the environment throughout the State;

(10) The serious emergency described in paragraph (4) requires—

(A) immediate and credible action that respects the complexity of the water system of the State and the importance of the water system to the entire State; and

(B) policies that do not pit stakeholders against one another, which history shows only leads to costly litigation that benefits no one and prevents any real solutions;

(11) Federal law (including regulations) directly authorizes expedited decision making procedures and environmental and public review procedures to enable timely and appropriate implementation of actions to respond to the type and severity of the serious emergency described in paragraph (4); and

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(12) The serious emergency described in paragraph (4) fully satisfies the conditions necessary for the exercise of emergency decision making, analytical, and public review requirements under—

(A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(C) water control management procedures of the Corps of Engineers described in section 222.5 of title 33, Code of Federal Regulations (including successor regulations); and

(D) the Reclamation States-Emergency Drought Relief Act of 1991 (Public Law 102–250; 106 Stat. 53).

(13) The 2008 smelt biological opinion and 2009 salmonid biological opinion contain reasonable and prudent alternatives intended to avoid the likelihood of jeopardy for listed species or resulting in the destruction or adverse modification of critical habitat of listed species protect listed fish species from being jeopardized by operation of the Central Valley Project and State Water Project and to prevent adverse modification of designated critical habitat;

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(14) The effect of those reasonable and prudent alternatives in the biological opinions may restrict the amount of water pumping that can occur to deliver water for agricultural, municipal, industrial, groundwater, and refuge uses in California;

(15) Data on the difference between water demand and reliable water supplies for various regions south of the ~~delta~~Delta, including the San Joaquin Valley, indicate there is a significant annual gap between reliable water supplies to meet agricultural, municipal and industrial, groundwater, and refuges water needs within the South of Delta and Friant Division of the Central Valley Project and the State Water Project south of the Sacramento-San Joaquin River Delta and north of the Tehachapi mountain range and the demands of those areas. This gap varies depending on the methodology of the analysis performed, but can be represented in the following ways:

(A) For Central Valley Project South-of-Delta water service contractors, if it is assumed that a water supply deficit is the difference in the amount of water available for allocation versus the maximum contract quantity, then the water supply deficits that have developed from 1992 to 2014 as a result of legislative and regulatory changes besides natural variations in hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

(B) For Central Valley Project and State Water Project water service contractors south of the Delta and north of the Tehachapi mountain range, if it is assumed that a water supply deficit is the difference between reliable water supplies, including maximum water contract deliveries, safe yield of groundwater, safe yield of local and surface supplies and long-term contracted water transfers, and water demands, including water demands from agriculture, municipal and industrial and refuge contractors, then the water supply deficit ranges between approximately 2,500,000 to 2,700,000 acre-feet.

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1 (16) Since the issuance of the biological opinions, recent studies have raised questions
2 about the benefits to endangered salmonid populations from water pumping restrictions,
3 including:

4 (A) Expert panel reviews have concluded that instantaneous water velocities in the
5 tidal Delta affect juvenile salmonids, not “tidally average” flows, as previously
6 assumed. Based on instantaneous water velocity modeling, water exports have a much
7 smaller area of effect than was previously believed;

8 (B) Tagging studies conducted since 1993 (representing more than 28 million fish)
9 demonstrate that the proportion of Sacramento Basin origin Chinook salmon entrained
10 into the pumping facilities (including pre-screen losses) are on average less than 1/10
11 of 1%; and

12 (C) Telemetric studies of Sacramento Basin and San Joaquin Basin origin
13 juvenile Chinook salmon have not demonstrated any significant adverse effect from
14 water exports on fish survival.

15 (17) Data of pumping activities at the Central Valley Project and State Water Project
16 delta pumps identifies that, on average from Water Year 2009 to Water Year 2014, take of
17 Delta smelt is 80 percent less than allowable take levels under pumping activity takes 893
18 delta Delta smelt annually with an authorized take level of 5,003 delta Delta smelt annually
19 according to the biological opinion issued December 15, 2008.
20

21 (18) Data of field sampling activities of the Interagency Ecological Program located in
22 the Sacramento-San Joaquin Estuary identifies that, on average from 2005 to 2013, the
23 program “takes” 3,500 delta smelt during annual surveys with an authorized “take” level
24 of 33,480 delta smelt annually – according to the biological opinion issued December 9,
25 1997.

26 ~~(4819)~~ It is worth exploring whether there is a way to implement the biological opinions
27 that would preserve the protections afforded listed fish and simultaneously increase water
28 deliveries to the Central Valley Project and State Water Project without weakening
29 environmental laws or protections.

30 ~~(4920)~~ In 2014, better information exists than was known in 2008 concerning conditions
31 and operations that may or may not lead to high salvage events that jeopardize the fish
32 populations, and what alternative management actions can be taken to avoid jeopardy.

33 ~~(2021)~~ Alternative management strategies, such as trapping and barging juvenile salmon
34 through the Delta, removing non-native species, enhancing habitat, ~~and~~ monitoring fish
35 movement and location in real-time, and improving water quality in the Delta can contribute
36 significantly to protecting and recovering these endangered fish species, and at potentially
37 lower costs to water supplies.

38 ~~(2422)~~ Resolution of fundamental policy questions concerning the extent to which
39 application of the Endangered Species Act affects the operation of the Central Valley
40 Project and State Water Project is the responsibility of Congress.

41 **SEC. 3. DEFINITIONS.**

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In this Act:

(1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

(2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the C.W.C. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.

Commented [A1]: This definition does not include the Contra Costa Pumping Plant because that pumping plant is not covered by these biological opinions

~~(3) JEOPARDY.—The term “jeopardy” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.~~

(4) LISTED SALMONID SPECIES.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon ~~including hatchery steelhead or salmon populations within the evolutionary significant unit (ESU) or distinct population segment (DPS).~~

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~~(5) Significant NEGATIVE IMPACT ON THE LONG-TERM SURVIVAL.—The term “significant negative impact on the long-term survival” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.~~

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(6) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(7) OMR FLOW OF -5000 CFS.—The term “OMR flow of -5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as ~~described in measured by~~

(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(8) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.

(9) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.

(10) STATE.—The term “State” means the State of California.

TITLE I—ADJUSTING DELTA SMELT MANAGEMENT
BASED ON INCREASED REAL-TIME MONITORING AND
UPDATED SCIENCE

SEC. 101. DEFINITIONS.

In this title:

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(1) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

(2) DELTA SMELT.—The term “~~delta-Delta~~ smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

SEC. 102. REVISE INCIDENTAL TAKE LEVEL
CALCULATION FOR DELTA SMELT TO REFLECT NEW
SCIENCE.

(a) No later than October 1, 2015, and at least every five years thereafter, the Director of Fish and Wildlife Service, in cooperation with other federal, state, and local agencies, shall using the best scientific and commercial data available, review, and if warranted, ~~use the best scientific and commercial data available to complete a review and, if~~ warranted, a modification of modify the method used to calculate the incidental take levels for adult and larval/juvenile Delta smelt in the ~~2008 delta-smelt~~ biological opinion that takes into account all life stages, among other considerations,—

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(1) salvage information collected since at least 1993; available over at least 18 years;
(2) updated or more recently developed statistical models;
(3) updated scientific and commercial data; and
(4) the most recent information regarding the environmental factors driving ~~delta-Delta~~ smelt salvage.

(b) Modified Incidental Take Level.—Unless the Director determines in writing that one or more of the requirements described in paragraphs (1) through (4) below are not appropriate, the modified incidental take level described in subsection (a) shall—

(1) Be normalized for the abundance of prespawning adult Delta smelt using the Fall Midwater Trawl Index or other index;

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(2) Be based on a simulation of the salvage that would have occurred from 1993

through 2012 if OMR flow has been consistent with the smelt biological opinions;

(3) Base the simulation on a correlation between annual salvage rates and historic water clarity and OMR flow during the adult salvage period; and

~~(4)~~ (4) Set the incidental take level as the 80 percent upper prediction interval derived from simulated salvage rates since at least 1993;

SEC. 103. FACTORING INCREASED REAL-TIME
MONITORING AND UPDATED SCIENCE INTO DELTA
SMELT MANAGEMENT.

(a) In General.—The ~~Secretary~~ Director shall use the best scientific and commercial

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1 data available to implement, evaluate, and refine or amend, as appropriate, the reasonable
2 and prudent alternative described in the smelt biological opinion, and any successor
3 opinions or court order. The Secretary shall make all significant decisions that implement
4 the smelt biological opinion, or any successor opinions, in writing, and shall document
5 the significant facts upon which such decisions are made, consistent with Section 706 of
6 Title 5 of the United States Code.

7 (b) Increased Monitoring to Inform Real-time Operations.— ~~Contingent upon funding,~~
8 ~~the~~ The Secretary shall conduct additional surveys, on an annual basis at the appropriate
9 time of the year based on environmental conditions, in collaboration with other ~~delta~~
10 Delta science interests.

11 (1) In implementing this section, ~~after seeking public input,~~ the Secretary shall —

12 (A) use the best available survey methods, based on accuracy, precision,
13 reliability, accommodation of multiple species, and take of listed species, for
14 the detection of Delta smelt to determine the extent that adult Delta smelt are
15 distributed in relation to certain levels of turbidity, or other environmental
16 factors that shall influence salvage rate; and

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17 (B) use the results from the survey methods described in subparagraph (A) to
18 determine how the Central Valley Project and State Water Project may be
19 operated more efficiently to minimize salvage while maximizing export
20 pumping rates without causing a negative impact on the long term survival of
21 the Delta smelt; use the most appropriate accurate survey methods available
22 for the detection of delta Delta smelt to determine the extent that adult delta
23 Delta smelt are distributed in relation to certain levels of turbidity, or other
24 environmental factors that may influence salvage rate; and

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25 (2) During the period beginning on December 1, 2014 and ending March 31, 2015,
26 and in each successive December through March period, if suspended sediment loads
27 enter the Delta from the Sacramento River and the suspended sediment loads appear
28 likely to raise turbidity levels in Old River north of the export pumps from values
29 below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the
30 Secretary shall—

31 (A) conduct daily monitoring using appropriate survey methods at locations
32 including, but not limited to, the vicinity of Station 902 to determine the extent
33 that adult Delta smelt are moving with turbidity toward the export pumps; and

34 (B) use results from the monitoring surveys referenced in paragraph (A) at
35 locations including, but not limited to, the vicinity of Station 902 to determine
36 how increased trawling can inform daily real-time Central Valley Project and
37 State Water Project operations to minimize salvage while maximizing export
38 pumping rates of water export without causing a significant negative impact on
39 the long-term survival of the Delta smelt.

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40 (c) Periodic Review of Monitoring.—Within twelve months of the date of enactment of

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1 this title, and at least once every 5 years thereafter, the Secretary shall—

2 (1) evaluate whether the monitoring program under subsection (b), combined with
3 other monitoring programs for the Delta, is providing sufficient data to inform
4 Central Valley Project and State Water Project operations to minimize salvage while
5 maximizing export pumping rates of water export without causing a significant
6 negative impact on the long-term survival of the Delta smelt; and

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7 (2) determine whether the monitoring efforts should be changed in the short- or
8 long-term to provide more useful data.

9 (d) Delta Smelt Distribution Study.—

10 (1) IN GENERAL.— No later than January 1, 2016, and at least every five years
11 thereafter, contingent upon funding, the Secretary, the Secretary, in collaboration
12 with the California Department of Fish and Wildlife, the California Department of
13 Water Resources, public water agencies, and other interested entities, Delta science
14 partners, shall evaluate and implement, as appropriate, implement new targeted
15 sampling and monitoring specifically designed to understand delta-Delta smelt
16 abundance, distribution, and the types of habitat occupied by delta-Delta smelt
17 during all life stages.

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18 (2) SAMPLING.—The Delta smelt distribution study shall, at a minimum—

19 (A) include recording water quality and tidal data;

20 (B) be designed to understand delta-Delta smelt abundance, distribution,
21 habitat use, and movements throughout the Bay-Delta, Suisun Marsh, and other
22 areas occupied by the Delta smelt during all seasons;

23 (C) consider areas not routinely sampled by existing monitoring programs,
24 including wetland channels, near-shore water, depths below 35 feet, and
25 shallow-water; and

26 (D) use the most biologically appropriate survey methods, including sampling
27 gear, best suited to collect the most accurate data for the type of sampling or
28 monitoring.

29 (e) Scientifically supported implementation of Old and Middle River flow
30 requirements.—In implementing the provisions of the smelt biological opinion, or any
31 successor biological opinion, pertaining to management of reverse flow in the Old and
32 Middle Rivers, the Secretary shall—

33 (1) consider the relevant provisions of the biological opinion or any successor
34 biological opinion;

35 (2) operating within the range provided for in the smelt biological opinion, or any
36 successor biological opinion, to minimize water supply reductions for the Central
37 Valley Project and the State Water Project, manage reverse flow in Old and Middle
38 Rivers at ~5,000 cfs unless scientific evidence developed pursuant to subparagraph

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03(c)(3) and (4) indicate a less negative OMR flow is necessary to avoid a negative impact on the long-term survival of the Delta smelt

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(3) document in writing any significant facts about real-time conditions relevant to the determinations of reverse OMR flow rates, including—

(A) whether targeted real-time fish monitoring in Old River pursuant to this section, including monitoring in the vicinity of Station 902, indicates that a significant negative impact on the long-term survival of the significant increase in the salvage of Delta smelt is imminent; and

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(B) whether near-term forecasts with available salvage models show under prevailing conditions that OMR flow of -5000 cubic feet per second will cause a significant negative impact on the long-term survival of the Dsignificantly increased take of delta smelt; and

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(4) show in writing that any determination to manage OMR reverse flow at rates less negative than -5000 cubic feet per second is necessary to avoid a significant negative impact ~~jeopardy on~~ on the long-term survival of the Delta smelt, including an explanation of the data examined and the connection between those data and the choice made, after considering:

(A) the findings in paragraph (3);

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(~~BA~~) whether continued project operations over the remainder of the water year would exceed the incidental take level;

(~~CB~~) the potential effects of ~~documented, quantified~~ entrainment on subsequent smelt abundance, including consideration of the distribution of the population throughout the Delta,

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(~~DC~~) the water temperature,

(~~ED~~) other significant factors relevant to the determination; and

(E) whether any alternative measures could have a substantially lesser water supply impact.

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(4) for any subsequent biological opinion, make the showing required in paragraph (3) for any determination to manage OMR reverse flow at rates less negative than the upper limit in the biological opinion.

(f) Memorandum of Understanding. No later than December 1, 2014, the Commissioner and the Director ~~shall will~~ execute a Memorandum of Understanding (MOU) to ensure that the smelt biological opinion is implemented in a manner that ~~maximizes minimizes~~ water supply ~~losses~~ while complying with applicable laws and regulations. If that MOU alters any procedures set out in the biological opinion, there ~~shall will~~ be no need to reinitiate consultation if those changes do not have a ~~significant negative impact on the long term survival~~ ~~n~~ adverse effect on listed species and the implementation of the MOU would not be a major change to implementation of the biological opinion. Any change to procedures that does not create a ~~significant negative impact on the long term survival~~ new adverse effect to listed species ~~shall will~~ not alter application of the take exemption in the incidental take statement in the biological opinion under the Endangered Species Act, section 7(o)(2).

(g) Calculation of Reverse Flow in OMR.—Within ~~180 90~~ days of the enactment of this title, the Secretary is directed, in consultation with the California Department of Water Resources to revise the method used to calculate reverse flow in Old and Middle Rivers for implementation of the reasonable and prudent alternatives in the smelt biological opinion and the salmonid biological opinion, and any succeeding biological opinions, for the purpose of ~~achieving better real-time management of Old and Middle River flow and potentially~~ increasing Central Valley Project and State Water Project water supplies. The ~~method of calculating reverse flow in Old and Middle Rivers shall be reevaluated not less than every five years thereafter to facilitate real-time decisionmaking and to help achieve maximum export pumping rates within limits established by the smelt biological opinion, the salmonid biological opinion, and any succeeding biological opinions.~~

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TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

SEC. 201. DEFINITIONS.

In this title:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator of NOAA Fisheries.

(2) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

(3) Other Affected Interests. — The term “other affected interests” refers to entities and people that could be impacted by existing or alternative management measures, including the State of California, subdivisions of the State of California, public water agencies and those who

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benefit directly and indirectly from the multipurpose operations of the Central Valley Project and the State Water Project.

(4) Commissioner.—The term “Commissioner” means the Commissioner of the Bureau of Reclamation.

(5) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

SEC. 202. REQUIRED SCIENTIFIC STUDIES.

(a) Trap and Barge Pilot Project to Increase Survivals Through the Delta.—The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, water agencies, and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator ~~and the Commissioner~~ shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

(2) The Assistant Administrator ~~and the Commissioner~~ shall provide an opportunity for 30 days of public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) ~~Within 60 days of~~ Upon completion of (2), above, the Assistant Administrator ~~and the Commissioner~~ shall complete the necessary design and evaluations of the pilot program and seek such ~~authorizations and permits~~ or other regulatory authorizations as may be required under federal law for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

(4) ~~Subject to the availability of funding,~~ The Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2015 or as soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Committees on the Environment and Public Works and Energy and Natural Resources and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating

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smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203.

(6) The pilot program is hereby found to be consistent with the requirements of the Central Valley Project Improvement Act (Public Law 102-575). No provision, plan or definition established or required by the Central Valley Project Improvement Act (Public Law 102-575) shall be used to prohibit the imposition of the pilot program, or to prevent the accomplishment of its goals.

(b) Tagging studies.

(1) IN GENERAL.—The Assistant Administrator, in collaboration with other ~~delta-Delta~~ science partners, shall implement tagging studies, including acoustic telemetry and PIT tagging studies as appropriate, wherein habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed. Studies may also be conducted to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—The sampling—

(A) shall include recording water quality and tidal data;

(B) will be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of through Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) will supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers which the Assistant Administrator determines are crucial for trend monitoring.

(6) The Assistant Administrator shall assess and review through the adaptive management procedures in the salmonid biological opinion recommendations from Central Valley Project and State Water Project service area water contractors on studies of other alternative management measures that may increase the survival of listed salmonid species and implement alternative management measures the Assistant Administrator determines are appropriate.

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SEC. 203. PROCESS FOR ENSURING SALMONID
MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.

(a) General directive. The reasonable and prudent alternative described in the salmonid biological opinion allows for and anticipates adjustments in project operation parameters to reflect the best scientific and commercial data currently available, and authorizes efforts to test and evaluate improvements in operations that will meet applicable regulatory requirements and maximize water supply reliability. Implementation of the reasonable and prudent alternative described in the salmonid biological opinion shall be adjusted accordingly as new scientific and commercial data are developed. The Commissioner and the Assistant Administrator shall fully utilize these authorities as described below.

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(b) Annual reviews of certain project operations. No later than December 31, 2015, and at least annually thereafter,

(1) The Commissioner, ~~in consultation with and~~ with the assistance of the Assistant Administrator, shall ~~commence annual efforts to~~ examine and identify adjustments to the initiation of Action IV.2.3 pertaining to negative OMR flows, subject to paragraph (5).

(2) The Commissioner, ~~in consultation with and~~ with the assistance of the Assistant Administrator, shall examine and identify adjustments in the timing, triggers or other operational details relating to the implementation of pumping restrictions in Action IV.2.1 pertaining to the inflow to export requirements, subject to paragraph (5).

(3) Pursuant to the consultation and assessments carried out under paragraphs (1) and (2) of this subsection, the Commissioner ~~and the Assistant Administrator~~ shall jointly make recommendations to the ~~Assistant Administrator~~ Secretary of the Interior and to the Secretary of Commerce ~~secretaries~~ on adjustments to project operations that, in the exercise of the adaptive management provisions of the salmonid biological opinion, ~~can improve water supplies will reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project~~ and are consistent with the requirements of applicable law and as further described in subsection (c).

(4) The Secretary of Commerce and the Secretary of the Interior shall direct the Commissioner and Assistant Administrator to implement recommended adjustments to project operations for which the conditions under subsection (c) are met.

(5) The Assistant Administrator and the Commissioner shall review and identify adjustments to project operations with water supply restrictions in any successor biological opinion to the salmonid biological opinion, applying the provisions of this section to those water supply restrictions where there are references to Actions IV.2.1 and IV.2.3.

(c) ~~Adjustments to project operations that shall be implemented. After In receiving reviewing the recommendations under subsection (b), the Secretary of the Interior and the Secretary of Commerce secretaries shall direct the Commissioner and the Assistant Administrator to implement those operational adjustments, or any recommendations the Assistant Administrator shall evaluate the effects of the recommended adjustments on listed species and shall recommend to the Commissioner adjustments for combination, for which, in aggregate:~~

(1) the net effect on listed species is equivalent to those of the underlying project operational parameters ~~criteria in the salmonid biological opinion~~, taking into account both

(i) efforts to minimize the adverse effects of the adjustment to project operations;
and

(ii) whatever additional actions or measures may be implemented in conjunction with the adjustments to operations to offset the adverse effects to listed species, consistent with (d), that are in excess of the adverse effects of the underlying operational parameters, if any; and mitigate its effects; and

(1)(2) the effects of the adjustment can be reasonably expected to fall within the incidental take authorizations.

(d) ~~Taking into account offsetting species survival benefits from other measures.~~

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(1)–When examining and identifying opportunities to offset the potential adverse effect of adjustments to operations under subsection (c)(1)(ii), the Commissioner and the Assistant Administrator shall take into account the potential species survival improvements that are likely to result from other measures which, if implemented in conjunction with such adjustments, would offset adverse effects, if any of the adjustments. When evaluating offsetting measures, the Commissioner and the Assistant Administrator shall consider the type, timing and nature of the adverse effects, if any, to specific species and ensure that the measures likely provide equivalent overall benefits to the listed species in the aggregate, as long as the change in survival rates for each species remains consistent with the Endangered Species Act and implementing regulations

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(e) Framework for examining opportunities to minimize or offset the potential adverse effect of adjustments to operations~~operating criteria~~.—Not later than December 31, 2015, and every five years thereafter, the Assistant Administrator shall, in collaboration with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

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(1) ~~with-through~~ restrictions on export pumping rates ~~restrictions~~ as specified by Action IV.2.3 as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) ~~with-through~~ San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1 as compared to the ~~export~~ restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) ~~by-through~~ a trap and barge program based on the experience of other systems to the extent they are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through the installation of temporary barriers, the management of Cross Channel Gates operations, and other projects affecting flow in the Delta;

(7) ~~by-through~~ salvaging fish that ~~may have been~~ entrained near the entrance to Clifton Court Forebay; and

(8) through any other management measures that may provide equivalent or better protections for listed species while maximizing export pumping rates without causing a negative impact on the long-term survival of a listed salmonid species.

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(9) through development and implementation of conservation hatchery programs for salmon and steelhead to aid in the recovery of listed salmon and steelhead species.

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(f) Survival estimates.

(1) ~~To the maximum extent feasible, the Assistant Administrator shall make these quantitative estimates of survival and determinations quantitatively to the maximum extent feasible,~~ such as a range of percentage increases in through-Delta survival that could result from the management measures, and if the scientific information is lacking for quantitative estimates, shall do so on qualitative terms based upon the best available science.

(2) If the Assistant Administrator provides qualitative survival estimates ~~of the benefits to the for a~~ species resulting from one or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in subsection (e) in terms of their most likely expected contribution to increased through-Delta survival relative to the other measures.

(3) If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued ~~the and~~ estimates of increased through-Delta survival ~~benefits~~ from different management measures pursuant to subsection (e), the Secretary shall compare the protections ~~benefits~~ to the species from different management measures based on the best scientific and commercial data available at the time.

(g) Comparison of adverse consequences for alternative management measures of equivalent ~~equal protection for a species benefit to the salmon.~~ —

(1) For the purposes of this subsection and subsection (c) —

(A) The alternative management measure or combination of alternative management measures identified in paragraph (2) shall be known as the “equivalent alternative measure.”

(B) The existing measure or measures identified in subparagraphs (2)(A),(B),(C), or (D) shall be known as the “equivalent existing measure.”

(C) An “equivalent increase in through-Delta survival rates for listed salmonid species” shall mean an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not ~~necessarily~~ the same change for each individual species, as long as the change in survival rates will not cause a significant negative impact on the long term survival of a listed salmonid for each species remains consistent with the Endangered Species Act and implementing regulations.

(2) As part of the reviews of project operations pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures listed in subsection (e)(3) through (8) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) through restrictions on export pumping rates with export restrictions as specified by Action IV.2.3, as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable;

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(B) through restrictions on export pumping rates as specified by Action IV.2.3, as compared to a modification of Action IV.2.3 that would provide additional water supplies, other than that described in subparagraph (A);

(C) through with San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, or

(D) through with San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to a modification of Action IV.2.1 that would reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project, provide additional water supplies, other than that described in subparagraph (C).

(3) If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether

(A) it is technically feasible and within federal jurisdiction to implement the equivalent alternative measure, and or

(B) it is technically feasible to implement the alternative measure and the Assistant Administrator certifies that state or local agencies or other entities have agreed to implement it; the State of California, or subdivision thereof, or local agency with jurisdiction has certified in writing to the Assistant Administrator that it has the authority and capability to implement the pertinent equivalent alternative measure, and/or

(C) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) If the Assistant Administrator makes the findings in subparagraph (3)(A) and (B), the Assistant Administrator and the Commissioner shall adjust project operations the operating criteria in the salmonid biological opinion pursuant to this subsection to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase export rates of pumping water supplies to the greatest extent possible while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

(h) Tracking adverse effects beyond the range of effects accounted for in the salmonid biological opinion and coordinated operation with the smelt biological opinion.

(1) Among the adjustments to the project operations ~~operational criteria~~ considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall

(A) Evaluate the effects on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) Consider requiring that before some or all of the provisions of Actions IV.2.1. or IV.2.3 are imposed in any specific instance, the Assistant Administrator show that the implementation of these provisions in that specific instance is necessary to avoid a

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negative impact on the long-term survival of a listed salmonid species.

(2) The Assistant Administrator, the Director and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt and salmonid biological opinions, in order to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the biological opinions.

(i) Real-Time Monitoring and Management. The Assistant Administrator and the Commissioner shall, through the NMFS adaptive management salmonid biological opinion provisions, analyze whether date-certain triggers that limit OMR reverse flow to -5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids. If the analysis shows that the use of real-time information to trigger OMR flow limitations would improve water supply without causing a significant negative impact on the long-term survival of significant adverse effects to Winter-run Chinook salmon, then such real-time management triggers shall be implemented.

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(j) If the quantitative estimates of through-Delta survival established by the Secretary for the management measures in (b)(2) exceed the through-Delta survival established for the RPAs, the Secretary shall evaluate and implement the management measures in (b)(2) as a prerequisite to implementing the RPAs contained in the BiOps.

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(k) Consistent with Section 706 of Title 5 of the United States Code, decisions of the Assistant Administrator and the Commissioner described in paragraphs (b) through (j) of Section 203 shall be made in writing, on the basis of best scientific and commercial data currently available, and shall document the significant facts upon which such decisions are made.

SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN THE STANISLAUS RIVER.

(a) Establishment of Non-native Predator Fish Removal Program- The Assistant Administrator and districts, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall jointly develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes from the Stanislaus River. The pilot program shall--

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(1) be scientifically based;

(2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;

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1 (3) among other methods, use wire fyke trapping, portable resistance board weirs, and
2 boat electrofishing, which are among the most effective predator collection techniques
3 that minimize effects to native anadromous fish;

4 (4) be developed, including the application for all necessary scientific research and
5 species enhancement permits under section 10(a)(1) of the Endangered Species Act of
6 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6
7 months after the date of the enactment of this Act;

8 (5) be implemented as quickly as possible following the issuance of all necessary
9 scientific research and species enhancement permits needed to begin the pilot program;
10 and

11 (6) be implemented for a period of seven consecutive calendar years.

12 (b) Management- The management of the pilot program shall be the joint responsibility of the
13 Assistant Administrator and the districts. Such parties shall work collaboratively to ensure the
14 performance of the pilot program, and shall discuss and agree upon, among other things, changes
15 in the structure, management, personnel, techniques, strategy, data collection, reporting and
16 conduct of the pilot program.

17 (c) Conduct-

18 (1) IN GENERAL- At the election of the districts, the pilot program may be conducted
19 by their own personnel, qualified private contractors hired by the districts, personnel of,
20 on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.

21 (2) PARTICIPATION BY NOAA FISHERIES- In the event the districts elect to conduct
22 the program using their own personnel or qualified private contractors hired by them, the
23 Assistant Administrator has the option to assign an employee of, on loan to, or otherwise
24 assigned to NOAA Fisheries, to be present for all activities performed in the field. Such
25 presence shall ensure compliance with the agreed upon elements specified in subsection
26 (b). The districts shall pay 100 percent of the cost of such participation as specified in
27 subsection (d).

28 (3) TIMING OF ELECTION- The districts shall notify the Assistant Administrator of
29 their election on or before October 15 of each calendar year of the pilot program, which
30 election shall apply to the work performed in the subsequent calendar year.

31 (d) Funding-

32 (1) CONTRIBUTED FUNDS- The Assistant Administrator is authorized to receive and
33 expend contributed funds for the purposes for which the funds contributed in a like
34 manner as if said sums had been specifically appropriated for said purposes.

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1 (2) ANNUAL FUNDING- The districts shall be responsible through contributed funds
2 for 100 percent of the cost of the pilot program. On or before December 1 of each year of
3 the pilot program, the Assistant Administrator shall submit to the districts an estimate of
4 the cost to be incurred by the NOAA Fisheries in the following calendar year, if any,
5 including the cost of any data collection and posting under subsection (e). If an amount
6 equal to the estimate is not provided through contributed funds, or any other fund as
7 directed by the Assistant Administrator, by the districts on or before December 31 of
8 each year, (a) the NOAA Fisheries shall have no obligation to conduct the pilot program
9 activities otherwise scheduled, and (b) the districts shall be prohibited from conducting
10 any aspect of the pilot program, until full payment is made by the districts.

11 (3) ACCOUNTING- On or before September 1 of each calendar year, the Assistant
12 Administrator shall provide an accounting of the prior calendar year's expenses to the
13 districts. If the estimate paid by the districts was less than the actual costs incurred by the
14 NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay
15 the difference to the fund indentified by the Assistant Administrator in subsection (d)(1),
16 or NOAA Fisheries shall have no obligation to conduct the pilot program activities
17 otherwise scheduled. If the estimate paid by the districts was greater than the actual costs
18 incurred by the NOAA Fisheries, then a credit shall be provided to the districts, which
19 shall be deducted from the estimate payment the districts must make for the work
20 performed by the NOAA Fisheries, if any, in the next calendar year.

21 Administrator, by the districts on or before December 31 of each year, (a) the NOAA
22 Fisheries shall have no obligation to conduct the pilot program activities otherwise
23 scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot
24 program, until full payment is made by the districts.

25 (e) Reporting and Evaluation-

26 (1) IN GENERAL- On or before the 15th day of each month, the Assistant Administrator
27 shall post on the website of the NOAA Fisheries a tabular summary of the raw data
28 collected in the prior month.

29 (2) REPORT- On or before June 30 of the calendar year following the completion of the
30 program, the Assistant Administrator and districts shall jointly publish a peer reviewed
31 report that--

32 (A) discusses the findings and conclusions of the pilot program;

33 (B) synthesizes the data collected under paragraph (1); and

34 (C) makes recommendations for further study and action.

35 (f) Permits Process-

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(1) Not later than 180 days after filing of an application Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 153(9)(a)(1)), for the performance of the pilot program.

(3) All permits issued shall be in the name of the NOAA Fisheries and the districts.

(4) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(5) The pilot program, including amendments thereto by the appropriate Federal and State agencies, shall constitute a conservation plan that complies with the requirements of section 10(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)).

(g) NEPA.--Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not apply with respect to section 402 and the issuance of any permit under this subsection during the seven year period beginning on the date of the implementation of the pilot program.

(h) Emergency Environmental Reviews – To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the ~~Commerce~~ ~~Interior~~ shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(i) Definitions- For the purposes of this section:

(1) ASSISTANT ADMINISTRATOR- The term 'Assistant Administrator' means the Assistant Administrator of National Oceanic and Atmospheric Administration, NOAA Fisheries

(2) DISTRICTS- The term 'districts' means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

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(3) PILOT PROGRAM- The term `program' means the pilot non-native predator removal program established under this section.

(j) Sunset- The authorities provided under this section shall expire seven years after the implementation of the pilot program.

(a) FINDINGS.—Congress finds that—

(1) The Sacramento-San Joaquin Bay Delta and its Tributaries-

(A) is one of the largest and most diverse estuaries in the United States,

(B) is a natural treasure and a vital link in California's water system, and

(C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and

(D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.

(2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento-San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed's ecosystem.

(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.

(5) If threats by nonnative species to native fish species are not addressed, there is a probability that native species of the Sacramento-San Joaquin Bay-Delta watershed's pelagic and anadromous community will go extinct.

(6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.

(7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

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(1) Not later than January 1, 2016, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention, control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts, in consultation with the Secretary of Commerce, shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

- (i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and
- (ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and
- (iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) Phase 2. The Secretary of the Interior, in consultation with the Secretary of Commerce, shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 204, including known hotspots of predator aggregation or activity, such as:

- (i) Clifton Court Forebay,
- (ii) Central Valley Project intakes,
- (iii) Head of Old River,
- (iv) Georgiana Slough,
- (v) Old and Middle Rivers,
- (vi) Franks Tract,
- (vii) Paintersville Bridge,
- (viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (ix) Human-made submerged structures, and
- (x) Salvage release sites.

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(C) Phase 3. If determined to be effective, the Secretary of the Interior, and the Secretary of Commerce, shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

(A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,

(B) water quality, and

(C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(5) After the pilot projects are complete, a report describing the results of the program shall be used by the Assistant Administrator in making the survival estimates required by Section 203(f).

(c) IMPLEMENTATION. The Secretary of the Interior shall implement the CALFED program described in subpart (b) for at least a period of seven consecutive years beginning on the date of implementation.

(d) REPORTING REQUIREMENTS. The Secretary of the Interior shall provide reports to the Senate Committees on Environment and Public Works and Energy and Natural Resources and the House Committee on Natural Resources on the following:

(1) No later than January 1, 2016, a description of the projects described in subpart (b), including the application for all necessary scientific research and species enhancement permits under section 10(a) (1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the CALFED invasive species Program.

(2) Upon the completion of Phase 1 as described in subsection (b)(1)(A), a report describing its implementation and cost effectiveness.

(3) Two years after the project begins, a report describing the progress of the eradication of the nonnative species in the Sacramento-San Joaquin Bay-Delta and its tributaries and how such efforts have helped the Recovery Plans for endangered and threatened Anadromous and Pelagic Species in the Sacramento-San Joaquin Bay-Delta watershed and the associated cost effectiveness of each control measure.

(4) After the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

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(e) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

~~SEC. 206. MARK FISHERY AND HARVEST
MANAGEMENT.~~

SEC. 301. FINDINGS.

Congress finds that—

(1) Based on the congressional findings in Sec. 2 of this Act, it is appropriate and necessary for federal agencies to exercise the maximum amount of flexibility provided to them under the applicable laws and regulations to maximize delivery of water supplies while providing substantially similar levels of protection~~the same or better~~reasonable and prudent levels of protection for species.

SEC. 302. DEFINITIONS.

In this title:

(1) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(2) KLAMATH PROJECT.—The term “Klamath Project” means the Bureau of Reclamation project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(3) RECLAMATION PROJECT.—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(4) SECRETARIES.—The term “Secretaries” means—

- (A) the Administrator of the Environmental Protection Agency;
- (B) the Secretary of Agriculture;
- (C) the Secretary of Commerce; and
- (D) the Secretary of the Interior.

(5) STATE WATER PROJECT.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

(6) State.—The term “State” means the State of California.

SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT.

(a) Water Supplies.—

(1) IN GENERAL.—~~In response to a declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect~~For the period of time such that in any year that the Sacramento Valley Index is 6.5 or lower, or at the request of the State of California, and until the average annual delivery capability of the Central Valley Project and State Water Project has been restored for two succeeding water years following either of those events have been completed where the final Sacramento Valley Index is 7.8 or greater, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, State Water Project contractors, and any other tribe, locality, water agency, or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State.

(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) do not result in a negative impact on the long-term survival of listed species within the Delta and provide benefits or have a neutral impact on in-Delta water user water quality; and

(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a complete written request for water transfer associated with voluntarily fallowing nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and

(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the

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following and associated water transfer are in compliance with applicable Federal ~~and~~
~~State~~ laws (including regulations);

(3) adopt a 1:1 inflow to export ratio ~~for the increment of increased flow of the San~~
~~Joaquin River~~, as measured as a 3-day running average at Vernalis during the period
beginning on April 1, and ending on May 31, ~~absent a determination in writing that a more~~
~~restrictive inflow to export ratio is required to avoid a significant negative impact on the~~
~~long-term survival of a listed salmonid species; provided that the 1:1 inflow to export ratio~~
~~shall apply for the increment of increased flow of the San Joaquin River~~ resulting from the
voluntary ~~sale, transfers, or and~~ exchanges of water ~~from agencies with rights to divert~~
water from the San Joaquin River or its tributaries ~~supplies~~, on the condition that a proposed
transfer or exchange under this paragraph may only proceed if the Secretary of the Interior
determines that the environmental effects of the proposed ~~and~~ ~~transfer, or exchange~~ are
consistent with effects permissible under applicable law (including regulations), ~~and~~ and
provided that Delta conditions are suitable to allow movement of the ~~acquired,~~
~~transfer~~ ~~transferred, or exchanged~~ water through the Delta consistent with ~~the Central Valley~~
~~Project's and the State Water Project's Reclamation's~~ permitted water rights.

~~-(4) allow and facilitate, consistent with existing priorities, water transfers through the~~
~~C.W. "Bill" Jones Pumping Plant or the Harvey O. Banks Pumping Plant from April 1 to~~
~~November 30 provided water transfers comply with state and federal law, including the~~
~~California Environmental Quality Act. Notwithstanding limitations on water transfers~~
~~established by the United States Bureau of Reclamation's Biological Assessment dated~~
~~August 2008, the smelt biological opinion, salmonid biological opinion, or any amendments~~
~~to the foregoing, water transfers through the C.W. "Bill" Jones Pumping Plant or the~~
~~Harvey O. Banks Pumping Plant may occur during any month provided water transfers~~
~~comply with state law, including the California Environmental Quality Act~~

~~and~~

(1) IN GENERAL.—On request by the Governor of the State, the heads of Federal agencies
shall use the expedited procedures under this subsection to make final decisions relating to
a Federal project or operation, ~~or to local or State projects or operations that require~~
decisions by the Secretary of the Interior or the Secretary of Commerce to provide
~~additional water supplies~~ if the project's or operation's purpose is to provide relief for
emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request by the Governor of the State, the head of a Federal
agency referenced in paragraph (1), or the head of another Federal agency responsible
for carrying out a review of a project, as applicable, the Secretary of the Interior shall
convene a final project decision meeting with the heads of all relevant Federal agencies
to decide whether to approve a project to provide relief for emergency drought
conditions.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested
under subparagraph (A) not later than 7 days after the date on which the meeting
request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the

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Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project, subject to subsection (e)(2).

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

(f) Drought Plan. For the period of time such that in any year that the Sacramento Valley index is 6.5 or lower, or at the request of the State of California, and until two succeeding years following either of those events have been completed where the final Sacramento Valley index is 7.8 or greater. The Secretaries of Commerce and the Interior, in consultation with appropriate State officials, shall develop a drought operations plan that is consistent with the provisions of this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the current drought.

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SEC. 304. OPERATION OF CROSS-CHANNEL GATES.

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenal salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State, and until two subsequent normal or above normal water years have been recorded within the Central Valley Project and for the period of time such that in any year that the Sacramento Valley index is 6.5 or lower, or at the request of the State of California, and until the average annual delivery capability of the Central Valley Project and State Water Project has been restored for two succeeding years following either of those events have been completed where the final Sacramento Valley index is 7.8 or greater. consistent with operational criteria and monitoring criteria

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developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with it;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

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(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2015, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the extent to which the gates are able to remain open.

(b) Recommendations.—After assessing the information collected under subsection (a), the Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternative contained in the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, that are likely to produce water supply benefits without causing a negative impact on the long-term survival of the listed species within the Delta or negatively affecting water quality. The Secretary shall also coordinate with the State Water Resources Control Board to seek consistent direction for the operation of the Delta Cross-Channel Gates under federal and state law, including Water Right Decision 1641.

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SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.

~~In response to the declaration of a state of drought emergency by the Governor of California~~
~~For the period of time such that in any year that the Sacramento Valley index is 6.5 or lower, or~~
~~at the request of the State of California, and until the average annual delivery capability of the~~
~~Central Valley Project and State Water Project has been restored for two succeeding years~~
~~following either of those events, have been completed where the final Sacramento Valley index~~
~~is 7.8 or greater, and for the period of time such a drought declaration remains in effect, the~~
~~Commissioner of the Bureau of Reclamation the Central Valley Project, in coordination with the~~
~~State Water Project may shall~~ continue to vary the averaging period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control Board decision D1641, ~~approved in the March Temporary Urgency Change Order—~~

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(1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the rising limb of a Delta inflow hydrograph; and

(2) to operate to a 14 day averaging period on the falling limb of the Delta inflow hydrograph.

SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.

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To minimize the time spent carrying out environmental reviews and to deliver water quickly that is needed to address emergency drought conditions in the State during the duration of an emergency drought declaration, the head of each applicable Federal agency shall, in carrying out this Act, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency.

SEC. 307. PRIORITIZING STATE REVOLVING FUNDS DURING DROUGHTS.

(a) In General.—This section shall apply for each of the fiscal years during which an emergency drought declaration of the State is in effect.

(b) The Administrator of the Environmental Protection Agency, in implementing the processes and programs under the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for those projects that are eligible to receive assistance under section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2)),

(1) issue a determination of waivers within 30 days of the conclusion of the informal public comment period pursuant to section 436(c) of title IV of division G of Public Law 113–76; and

(2) authorize, at the request of the State, 40-year financing for assistance under section 603(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(f)(2)).

(c) Effect of Section.—Nothing in this section authorizes the Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) for any other State.

SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.

The Secretaries shall, consistent with applicable laws (including regulations)—

~~(1) to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards—~~

~~(2) contingent upon funding,~~ in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing

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water supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State and elsewhere;

(4) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

(45) manage reverse flow in the Old and Middle Rivers ~~at -5,000 cfs~~ as prescribed by the ~~smelt biological opinions issued by the United States Fish and Wildlife Service on December 15, 2008, for Delta smelt and by the National Marine Fisheries Service on June 4, 2009, for and the salmonids biological opinion~~, or any successor biological opinions, to ~~maximize~~ minimize water supply reductions for the Central Valley Project and the State Water Project, ~~and issue guidance no later than December 31, 2015 directing their employees to take all steps necessary to manage flow in accordance with this paragraph;~~ Reductions in pumping to levels less negative than -5,000 cfs may be made subject to Sections 103(e)(3) and (4).

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(56) as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper Division shall be with or to the respective State; and

(67) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

**SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY
FOR FIRST FEW STORMS OF DROUGHT THE WATER
YEARS OF 2015 WATER YEAR.**

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(a) Findings:

(1) During the 2014 water year, operations of the Central Valley Project and the State Water Project, the incidental take of adult Delta smelt was zero; of juvenile Delta smelt, 78 (7.7% of the incidental take ~~limit level~~); of winter run chinook, 339 (1.4% of the incidental take ~~limit level~~); of spring run chinook, zero; and of steelhead, 261 (8.7% of the incidental take ~~limit level~~).

(2) The Central Valley Project and State Water Project exceeded an Old and Middle River flow of -5,000 cubic feet per second over a 14-day average for brief periods after three storm events in February and March 2014, as a result of increased pumping, but did not cause substantially increased take of smelt or salmon.

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(3) Hydrological conditions in dry years, such as the 2014 water year, have not triggered water pumping restrictions pursuant to the smelt biological opinion.

(4) The Secretaries should be allowed more flexibility to increase pumping levels without causing significant risk to the listed species or weakening other environmental protections.

~~(5) To address~~ Given California's severe drought conditions, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise for the duration of the existing drought emergency the flexibility provided herein to capture the maximum amount of ~~storm flows resulting from storm events when and if they occur in the 2015 water year,~~ and provide for the diversion of water to increase water those supplies to the Central Valley Project and State Water Project so that farms, businesses, and homes in drought-stricken areas will have an opportunity to bolster their meager supplies when water is available.

~~(5)(6)~~ It is reasonable to conclude that similar conditions will exist during future drought emergencies and regulatory relief during future first few storm events must be provided.

(b) In general. For the duration of a drought emergency, ~~Ce~~Consistent with avoiding jeopardy-significant negative impact on the long-term survival in the short-term additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act and other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in negative Old and Middle River flows at up to 7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for up to 21,3028 cumulative consecutive days after October 1, ~~2014~~, as described in subsection (c).

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(c) Days of temporary operational flexibility. The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(d) Compliance with ESA authorizations. In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid an additional adverse effects, significant negative impacts on the long-term survival of a jeopardy on listed fish species beyond the range of those authorized under the Endangered Species Act.

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(e) Other environmental protections.

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year;

(2) During the first flush of sediment out of the Delta in each water year during the 2015 water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult delta-Delta smelt (*Hypomesus transpacificus*) to areas

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in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants;

(3) This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act, in addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period.

(4) During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to insure-ensure incidental take limits levels are not exceeded, and to identify potential negative impacts and actions, if any, necessary to mitigate any impacts of the temporary operational flexibility to listed-species listed under the Endangered Species Act, 16 U.S.C. 1531–1544 as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531-1544; and

(5) The Commissioner is authorized to take any action, including the transfer of appropriated funds between accounts that, in the Commissioner's judgment, are necessary to mitigate the impacts of such operations as long as any such mitigation is consistent with the requirements of this section.

(f) Technical adjustments to target period. If, before temporary operational flexibility has been implemented on 21-30/28 cumulative consecutive days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the 21/8 consecutive cumulative days specified in subsection (b).

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(g) Emergency consultation; effect on running averages.

(1) If necessary to implement the provisions of this section, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act and its implementing regulation at 50 CFR 402.05 to temporarily adjust the operating criteria under the biological opinions,

(A) solely for the 28 cumulative consecutive+ days of temporary operational flexibility—

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(iA) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (d) and (e); and

(iiB) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions, or

(B) for other adjustments to operating criteria or to take other urgent actions to address water supply shortages for the least amount of time or volume of diversion necessary as determined by the Commissioner.

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(2) Following the conclusion of the ~~21-28~~ cumulative consecutive days of temporary operational flexibility, the Commissioner shall not reinitiate consultation on these adjusted operations, and no mitigation shall be required, if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act. ~~If the Commissioner reinitiates consultation, no mitigation measures shall be required during the pendency of the drought emergency. Any mitigation measures imposed must be based on quantitative data and required only to the extent that such data demonstrates actual harm to species.~~

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(h) Level of detail required for analysis. In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

~~(i) Duration. This section shall expire on September 30, 2015.~~ This section shall apply during any water year when a gubernatorial drought declaration is in force.

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SEC. 310. EXPEDITING WATER TRANSFERS.

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking “In order to” and inserting the following:

“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

(A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”; and

(5) in paragraph (5) (as so designated), by adding at the end the following:

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“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”;

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”

SEC. 311. Additional Emergency Consultation.

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SEC. 311. WARREN ACT CONTRACTS.

[To be supplied.]

SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of the Interior shall develop and offer to the Calaveras County

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Water District (hereafter in this section referred to as the “CCWD”) a contract enabling the CCWD store up to 100,000 acre-feet of their Stanislaus River water rights in any excess capacity of the New Melones Reservoir in accordance with the terms and conditions of the Act of February 21, 1911 (43 U.S.C. 523–525; commonly known as the “Warren Act”). This stored water may be obtained for use by CCWD at a point, or points determined convenient to the District.

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(b) OTHER TERMS AND CONDITIONS.—The terms and conditions of any contract entered into under subsection (a) shall—

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(1) be for a term of not less than 20 years; and

(2) expressly provide that—

(A) the CCWD may use any water impounded and stored in the New Melones Reservoir for any legal purpose under California law, including use within the boundaries of the

CCWD, transfer to and reasonable and beneficial use by a person or entity not located with

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in the boundaries of CCWD, and for instream use in the Stanislaus River, the San Joaquin River, or the Sacramento-San Joaquin River Delta; and

(B) any water impounded and stored by the district shall not be released or withdrawn if the end of month September storage level for New Melones Reservoir is projected to be equal to or below 300,000 acre-feet, but in such event the impounded and stored water shall be retained in the New Melones Reservoir for use by the district in the following year, subject to the same 300,000 acre-foot minimum storage requirement, and without additional payment being required.

[To be supplied.]

TITLE IV—INCREASING WATER STORAGE

SEC. 401. FINDINGS.

Congress finds that—

(1) the record drought conditions being experienced in the State as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State;

(3) Congress authorized relevant feasibility studies for 4 water storage projects in the State, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of Public Law 108–361 (118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of Public Law 108–361 (118 Stat. 1684);

(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of Public Law 108–361 (118 Stat. 1684); and

(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of Public Law 108–361 (118 Stat. 1684);

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(4) (A) as of the date of enactment of this Act, it has been more than 10 years since the authorization of the feasibility studies referred to in paragraph (3); but

(B) complete and final feasibility studies have not been prepared for any of those water storage projects;

(5) as of August 2014, only 2 of the 4 projects referred to in paragraph (3) have completed draft feasibility studies;

(6) the slow pace of work on completion of the feasibility studies for those 4 water storage projects is—

(A) unjustified; and

(B) of deep concern; and

(7) there is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address the water challenges of the State.

SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.

(a) In General.—Notwithstanding subparagraph (B)(i) of section 103(d)(1) of Public Law 108–361 (118 Stat. 1684), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), shall complete a final feasibility study and any other applicable environmental review documents for the project described in—

(1) subparagraph (A)(i)(I) of that section by not later than December 31, 2014;

(2) subparagraphs (A)(ii)(~~I~~ and (II)) of that section by not later than ~~July 31~~ November 30, 2015.

(b) Environmental Reviews.—In carrying out subsection (a), the Secretary—

(1) shall ensure that—

(A) all applicable reviews, including reviews required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), are completed as expeditiously as practicable; and

(B) the shortest applicable process under that Act is used, including in the completion of—

(i) feasibility studies;

(ii) draft environmental impact statements; and

(iii) final environmental impact statements; and

(2) shall not be required to complete a draft or final environmental impact statement if the Commissioner of Reclamation determines, and the Secretary concurs, that the project fails to meet applicable Federal cost-benefit requirements or standards.

(c) Accountability.—

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(1) If the Bureau of Reclamation determines that an environmental review document for the water storage projects referenced in of Section 103(d)(1) of P.L. 108-361 will not be completed according to the schedule specified in subsection (a), the Bureau shall notify the Senate Committee on Energy and Natural Resources, the Senate Appropriations Subcommittee on Energy and Water Development, the House of Representatives Natural Resources Committee, and the House of Representatives Transportation and Infrastructure Committee within 14 days of the determination. The notification shall include:

(A) An explanation of the delay;

(B) The anticipated length of the delay and the revised completion date;

(C) The steps that the Bureau will take to mitigate the delay, including, but not limited to, a request to reprogram existing funds appropriated to the Bureau to meet the revised completion deadline.

(2) The Bureau of Reclamation shall carry out the procedures in subsection (a) for each subsequent delay beyond the revised completion deadline.

(3) IN GENERAL.—[Subject to paragraph (2).] if the Secretary fails to complete a feasibility study or environmental review required for any water storage project referred to in subsection (a) in accordance with the schedule specified in that subsection, the amounts made available to the Policy and Administration Account of the Bureau of Reclamation for fiscal year 2015 shall be withheld and reduced by an amount equal to the product obtained by multiplying—

(A) \$20,000; and

(B) the number of weeks during the period beginning on the applicable deadline for completion of the feasibility study or environmental review and ending on the date on which the final feasibility study or environmental review is completed.

(4) DISTRIBUTION.—If the relevant feasibility study or environmental review is delayed beyond the schedule specified in subsection (a), the percentage of withheld funds that shall be released and made available to the Bureau of Reclamation on completion of the feasibility study or environmental review document shall be—

(A) in the case of a delay the duration of which is less than [or equal to] 90 days, 100 percent of the withheld funds;

(B) in the case of a delay the duration of which is more than 90 days but less than [or equal to] 180 days, 75 percent of the withheld funds;

(C) in the case of a delay the duration of which is more than 180 days but less than [or equal to] 270 days, 50 percent of the withheld funds;

(D) in the case of a delay the duration of which is more than 270 days but less than [or equal to] 1 year, 25 percent of the withheld funds; and

(E) in the case of a delay the duration of which is more than 1 year, 0 percent of the withheld funds.

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1 SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.

2 (a) The Secretary, acting through the Commissioner of the Bureau of Reclamation, may
3 partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of
4 the Water Supply Reliability and Environmental Improvement Act (Public Law 108-361) (and
5 Acts supplemental and amendatory to the Act) with local joint powers authorities formed
6 pursuant to State law by irrigation districts and other local water districts and local governments
7 within the applicable hydrologic region, to advance those projects.

8 (b) ~~PLACEHOLDER FOR AUTHORIZATION ISSUE~~ If the Secretary determines a project
9 described in Sections 402(a)(1) and (2) is feasible, the Secretary is authorized to carry out the
10 project in a manner that is substantially in accordance with the recommended plan, and subject to
11 the conditions described in the feasibility study, provided that no federal funding shall be used to
12 construct the project. Construction Authorization.—

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13 (1) IN GENERAL.—Each water storage project identified under clauses (i) and (ii) of
14 section 103(d)(1)(A) of the Water Supply, Reliability, and Environmental Improvement Act
15 (Public Law 108-361; 118 Stat. 1684) is authorized for construction on completion of the
16 required feasibility study and environmental impact statement, if the Secretary certifies in
17 writing that, based on the feasibility study and the environmental impact statement, the
18 water storage project—

19 (A) has a positive benefit-cost ratio; and

20 (B) is in the interest of the United States.

21 (2) FUNDING.—No other funds, except those amounts described in section 103(f)(2)(A)
22 of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-
23 361; 118 Stat. 1695) authorized for implementation of the Environmental Water Account
24 that are available and unobligated as of the date of enactment of this Act, shall be used to
25 pay the Federal share of the cost of construction of the water storage projects authorized by
26 this subsection.

27 (c) PRECONSTRUCTION.—With respect to a water storage project authorized by subsection (b),
28 the Secretary shall implement the shortest practicable process provided under applicable law
29 (including regulations) to complete any remaining study, assessment, consultation, or review
30 supporting commencement of construction of the project.

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35 SEC. 404 . DAM SAFETY PROJECTS WITH INCREASED

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STORAGE COMPONENT.

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

“SEC. 5B. ADDITIONAL PROJECT BENEFITS.

“(a) In General.—Notwithstanding section 3, if the Secretary, ~~in the judgment of the Secretary,~~ makes a determination described in subsection (b), the Secretary is authorized to develop any additional project benefit—

“(1) through the construction of new or supplementary works on a project in conjunction with the activities carried out by the Secretary pursuant to section 2; and

“(2) subject to the conditions described in the feasibility study relating to the project.

“(b) Description of Determination.—A determination referred to in subsection (a) is a determination by the Secretary that—

“(1) an additional project benefit, including but not limited to additional conservation storage capacity, is—

“(A) necessary; and

“(B) in the interests of the United States; and

“(2) the project benefit proposed to be carried out is—

“(A) feasible; and

“(B) not inconsistent with the purposes of this Act.

“(c) Requirements.—The costs associated with developing an additional project benefit under this section shall be—

“(1) allocated to entity or entities benefitting from the additional conservation storage capacity, subject to agreement between the state and federal funding agencies on such allocations; and

“(2) repaid in accordance with all applicable provisions of Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).”.

(b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) is amended—

~~“(1) by striking “Funds” and inserting the following:~~

“(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner of Reclamation shall submit to Congress—

~~“(I) an expansion draft environmental impact statement and feasibility study relating to the San Luis Reservoir by not later than April 1, 2016; and~~

SEC. 501. PROTECTIONS FOR STATE WATER PROJECT

CONTRACTORS.

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(a) The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(i) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;

(ii) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or

(iii) requires take authorization under section 2081 for operation of the State Water Project in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion;

and as a consequence of the Department's action, Central Valley Project yield is greater than it would have been absent the Department's actions, that additional yield shall be made available to the State Water Project for delivery to State Water Project contractors to offset losses resulting from the Department's action. The Secretary shall immediately notify the Director of the California Department of Fish and Wildlife in writing if the Secretary determines that implementation of the Biological Opinions consistent with this Act reduces environmental protections for any species covered by the opinions.

SEC. 502. AREA OF ORIGIN PROTECTIONS

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(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities and to honor water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 16, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2, Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

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(b) Any action undertaken by the Secretary or the Secretary of Commerce pursuant to both this Act and Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531, et seq.), as amended, that requires that diversions from the Sacramento River or the San Joaquin River watersheds upstream of the Delta be bypassed shall not be undertaken in a manner that alters the water rights priorities established by California law. Nothing in this Title alters the existing authorities provided to and obligations placed upon the Federal government under the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.), as amended. (c) With respect to individuals and entities with water rights on the Sacramento River, the mandates of this Section may be met, in whole or in part, through a contract with the Secretary executed pursuant to Section 14 of Public Law 76-260, 53 Stat. 1187 (43 USC § 389) that is in conformance with the Sacramento River Settlement Contracts renewed by the Secretary in 2005.

SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

- (a) The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) as amended and other applicable federal and state laws, shall not directly or indirectly result in the involuntary reduction of water supply or fiscal impacts to individuals or districts who receive water from either the State Water Project or the United States under water rights settlement contracts, exchange contracts, water service contracts, repayment contracts, or water supply contracts or cause redirected adverse water supply or fiscal impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area.
- (b) To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.
- (c) Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange contracts and settlement contracts prior to the allocation of any other Central Valley Project water.
- (d) Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing State Water Project water supply or settlement contract with the State.

SEC. 504. EFFECT ON STATE LAWS.

Nothing in this Act preempts [any state law in effect on the date of enactment of this Act] or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law including established water rights priorities. [John Watts objected to the deletion; there will be follow up discussion with Kyle Lombardi when he is available.] Nothing in this Act preempts any State law in effect on the date of enactment of this Act, including area of origin and other water rights protections.

SEC. 505. ALLOCATIONS FOR SACRAMENTO VALLEY CONTRACTORS

(a) In General.—Subject to: (i) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project; (ii) the United States' obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; (iii) the Secretary's obligation to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act, (Pub. Law 102-575,) and (iv) subsection (b), the Secretary is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

(1) Not less than 100% of their contract quantities in a "Wet" year;

(2) Not less than 100% of their contract quantities in an "Above Normal" year;

(3) Not less than 100% of their contract quantities in a "Below Normal" year that is preceded by an "Above Normal" or a "Wet" year;

(4) Not less than 50% of their contract quantities in a "Dry" year that is preceded by a "Below Normal," an "Above Normal," or a "Wet" year;

(5) In all other years not identified herein, the allocation percentage for existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed shall not be less than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors, up to 100%; provided, that nothing herein shall preclude an allocation to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed that is greater than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors;

(b) Protection of Municipal and Industrial Supplies.—Nothing in subsection (a) shall be deemed to: (i) modify any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary; (ii) affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies; (iii) affect or limit the authority of the Secretary to implement municipal and industrial water shortage policies; or (iv) affect allocations to Central Valley Project municipal and industrial contractors pursuant to such policies. Neither subsection (a) nor the Secretary's implementation of subsection (a) shall constrain, govern or affect, directly or indirectly, the operations of the Central Valley Project's American River Division or any deliveries from that Division, its units or its facilities.

(c) This section does not affect the allocation of water to Friant Division contractors and shall not result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant Division.

(d) The Secretary will direct that the United States Bureau of Reclamation develop and implement a program, within one year of enactment of this bill, to provide for the opportunity for existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed to reschedule water, provided for under their CVP water service contracts, from one year to the next.

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(e) Definitions.—In this section:

(1) The term “existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed” means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation

(2) The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40-30-30) Index.

~~SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.~~

TITLE VI—MISCELLANEOUS

SEC. 601_. AUTHORIZED SERVICE AREA.

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include the area within the boundaries of the Kettleman City Community Services District, California, as in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District, California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for water deliveries authorized under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

~~SEC. 602_. RESCHEDULED WATER.~~

(a) Report; Advisory Board.—Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory

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Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into the Restoration Fund during the preceding fiscal year.

“(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each expenditure.

“(h) Advisory Board.—

“(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board (referred to in this section as the ‘Advisory Board’), which shall be composed of 154 members appointed by the Secretary.

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—The Secretary shall appoint members to the Advisory Board that represent the various Central Valley Project stakeholders, of whom—

“(i) 3 members shall be agricultural users of the Central Valley Project;

“(ii) 2 members shall be municipal and industrial users of the Central Valley Project;

“(iii) 3 members shall be power contractors of the Central Valley Project;

“(iv) 1 member shall be a representative of a federal wildlife refuge that contracts for Central Valley Project water supplies with the Bureau of Reclamation;

“(v) 1 member shall represent nongovernmental organizations involved in the protection and restoration of California fisheries;

“(vi) 1 member shall represent the commercial fishing industry;

“(vii) 1 member shall represent the recreational fishing industry; and

“(viii) 2 members shall be appointed at the discretion of the Secretary.

“(ix) 1 member shall be an economist have expertise in the economic impact of changes to water operations.

“(B) OBSERVER.—The Secretary and the Secretary of Commerce may each designate a representative to act as an observer of the Advisory Board.

“(C) CHAIRMAN.—The Secretary shall appoint 1 of the members described in subparagraph (A) to serve as Chairman of the Advisory Board.

“(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

“(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

“(5) Vacancies.—

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(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(C) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

“(6) Removal —A Member of the Panel may be removed from office by the Secretary of the Interior.

“(7) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

“(8) DUTIES.—The duties of the Advisory Board are—

“(A) to meet not less frequently than semiannually to develop and make recommendations to the Secretary regarding priorities and spending levels on projects and programs carried out under this title;

“(B) to ensure that any advice given or recommendation made by the Advisory Board reflects the independent judgment of the Advisory Board;

“(C) not later than December 31, 2015, and annually thereafter, to submit to the Secretary and Congress the recommendations under subparagraph (A); and

“(D) not later than December 31, 2015, and biennially thereafter, to submit to Congress a report that details the progress made in achieving the actions required under section 3406.

“(9) ADMINISTRATION.—With the consent of the appropriate agency head, the Advisory Board may use the facilities and services of any Federal agency.”

“(10) Cooperation and Assistance.—

(A) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(B) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

~~SEC. 603. WATER OPERATIONS REVIEW PANEL.~~

~~SEC. 6067056. CONTINGENCY IN EVENT OF
CONTINUING RESOLUTION FOR FISCAL YEAR 2015.~~

~~SEC. 603. YIELD ACCOUNTING.~~ ~~Sec. 604603. WATER SUPPLY
ACCOUNTING.~~

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Commented [A18]: We want to discuss this section and whether there are any alternative ways to address the underlying concern while minimizing the potential scope of the language.

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All Central Valley Project water, except Central Valley Project water released from the Friant Division pursuant to the San Joaquin River Restoration Settlement Act (Public Law 111-11) and water released pursuant to the December 2000 Trinity River Mainstem Fishery Restoration Record of Decision, used to implement an action undertaken for a fishery beneficial purpose that was not imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing on October 30, 1992, shall be credited to the quantity of Central Valley Project yield dedicated and managed under this section, provided, that nothing herein shall affect the Secretary's duty to comply with any otherwise lawful requirement imposed on operations of the Central Valley Project under any provision of federal or state law.

Sec. 605-604 . IMPLEMENTATION OF WATER REPLACEMENT PLAN.

(a) Not later than October 1, 2015, the Secretary shall update and implement the plan required by Section 3408(j) of Title 34 of Public Law 102-575. The Secretary shall provide reports to the Congress annually describing the progress of implementing the plan required by Section 3408(j) of Title 34 of Public Law 102-575.

(2) ~~IN GENERAL, (Subject to paragraph (3)) if the Secretary fails to update and implement the plan required by paragraph (1) of this section in accordance with the schedule specified in that subsection, the amounts made available to the Policy and Administration Account of the Bureau of Reclamation for fiscal year 2015 shall be withheld and reduced by an amount equal to the product obtained by multiplying~~

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Sec. 606 . RESTORATION FUND.

Sec. 607-605 . NATURAL AND ARTIFICIALLY SPAWNED SPECIES.

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Sec. 608-606 . AMENDMENT TO PURPOSES

Section 3402 of the Central Valley Project Improvement Act (106 Stat. 4706) is amended—

(1) in subsection (f), by striking the period at the end; and

(2) by adding at the end the following:

“(g) to ensure that water dedicated to fish and wildlife purposes by this title is replaced and provided to Central Valley Project water contractors as soon as is practicable by December 31, 2018, at the lowest financial cost reasonably achievable; and

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“(h) to facilitate and expedite water transfers in accordance with this Act.”.

Sec. 609-607 . AMENDMENT TO DEFINITION

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“Section 3406(b) of the Central Valley Project Improvement Act (106 Stat. 4710) is amended by adding the following:

(24) Limitation Clause. Nothing in this section shall preclude the take of non-native fish for scientific study or to reduce the effects of predation by non-native fish on species listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)”

Section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707) is amended—

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SEC. 608.— DEADLINES FOR CERTAIN AGENCY ACTIONS IN THE ABSENCE OF AVAILABLE FUNDING.

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Commented [A19]: Instead of using “contingent upon funding” across the bill, we are using this section to address the agency’s implementation timeline in the event that funding is not available.

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(a) Not later than 30 days after the date of enactment of this Act, and in any subsequent fiscal year, not later than 30 days after the date of enactment of legislation providing appropriations to the Departments of the Interior and Commerce, or the latest such legislation if such bills are enacted separately, the Secretaries of the Interior and Commerce shall submit to the Committees on Appropriations of the House of Representatives and the Senate a detailed spend plan for federal, state, and local funds that remain available for obligation or expenditure in the current fiscal year for the agency actions prescribed in sections 103(b), 103(d), 202, 204, 205, and 308(1).

(b) Not later than 30 days after submission of the spend plan required by subsection (a), following consultation with the Committees on Appropriations of the House of Representatives and the Senate, the Secretaries of the Interior and Commerce may extend the deadlines contained in sections 103(b), 103(d), 202, 204, 205, and 308(1) until the enactment of subsequent appropriations legislation for the following fiscal year if there is not sufficient funding available for obligation or expenditure for the agency actions prescribed in such sections.

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TITLE VII. REGULATORY STREAMLINING.

SEC. 701. PERMITTING EFFICIENCIES

Commented [A20]: We want to discuss with Interior ways to address Reclamation’s concerns with sections 701 and 703

(a) Definitions

- (1) SECRETARY- The term ‘Secretary’ means the Secretary of the Interior.
- (2) BUREAU- The term ‘Bureau’ means the Bureau of Reclamation.
- (3) QUALIFYING PROJECTS- The term ‘qualifying projects’ means new surface water storage projects in the States covered under the Act of June 17, 1902 (32 Stat. 388, Chapter 1093) and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.) constructed on lands administered by the

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Department of the Interior or the Department of Agriculture, exclusive of any easement, right-of-way, lease, or any private holding.

(4) COOPERATING AGENCIES- The term `cooperating agency' means a Federal agency with jurisdiction over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a qualifying project under applicable Federal laws and regulations, or a State agency subject to section 3(c).

(b) Establishment of lead agency and cooperating agencies.

(a) Establishment of Lead Agency- The Bureau is established as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, or other approvals or decisions required under Federal law to construct qualifying projects.

(b) Identification and Establishment of Cooperating Agencies- The Commissioner of the Bureau shall--

(1) identify, as early as practicable upon receipt of an application for a qualifying project, any Federal agency that may have jurisdiction over a review, analysis, opinion, statement, permit, license, approval, or decision required for a qualifying project under applicable Federal laws and regulations; and

(2) notify any such agency, within a reasonable timeframe, that the agency has been designated as a cooperating agency in regards to the qualifying project unless that agency responds to the Bureau in writing, within a timeframe set forth by the Bureau, notifying the Bureau that the agency--

(A) has no jurisdiction or authority with respect to the qualifying project;

(B) has no expertise or information relevant to the qualifying project or any review, analysis, opinion, statement, permit, license, or other approval or decision associated therewith; or

(C) does not intend to submit comments on the qualifying project or conduct any review of such a project or make any decision with respect to such project in a manner other than in cooperation with the Bureau.

(c) State Authority- A State in which a qualifying project is being considered may choose, consistent with State law--

(1) to participate as a cooperating agency; and

(2) to make subject to the processes of this Act all State agencies that--

(A) have jurisdiction over the qualifying project;

(B) are required to conduct or issue a review, analysis, or opinion for the qualifying project; or

(C) are required to make a determination on issuing a permit, license, or approval for the water resource project.

(c) Bureau Responsibilities

(a) In General- The principal responsibilities of the Bureau under this Act are to--

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- (1) serve as the point of contact for applicants, State agencies, Indian tribes, and others regarding proposed projects;
(2) coordinate preparation of unified environmental documentation that will serve as the basis for all Federal decisions necessary to authorize the use of Federal lands for qualifying projects; and
(3) coordinate all Federal agency reviews necessary for project development and construction of qualifying projects.

(b) Coordination Process- The Bureau shall have the following coordination responsibilities:

(1) PRE-APPLICATION COORDINATION- Notify cooperating agencies of proposed qualifying projects not later than 30 days after receipt of a proposal and facilitate a preapplication meeting for prospective applicants, relevant Federal and State agencies, and Indian tribes to--

- (A) explain applicable processes, data requirements, and applicant submissions necessary to complete the required Federal agency reviews within the time frame established; and
(B) establish the schedule for the qualifying project.

(2) CONSULTATION WITH COOPERATING AGENCIES- Consult with the cooperating agencies throughout the Federal agency review process, identify and obtain relevant data in a timely manner, and set necessary deadlines for cooperating agencies.

(3) SCHEDULE- Work with the qualifying project applicant and cooperating agencies to establish a project schedule. In establishing the schedule, the Bureau shall consider, among other factors--

- (A) the responsibilities of cooperating agencies under applicable laws and regulations;
(B) the resources available to the cooperating agencies and the non-Federal qualifying project sponsor, as applicable;
(C) the overall size and complexity of the qualifying project;
(D) the overall schedule for and cost of the qualifying project; and
(E) the sensitivity of the natural and historic resources that may be affected by the qualifying project.

(4) ENVIRONMENTAL COMPLIANCE- Prepare a unified environmental review document for each qualifying project application, incorporating a single environmental record on which all cooperating agencies with authority to issue approvals for a given qualifying project shall base project approval decisions. Help ensure that cooperating agencies make necessary decisions, within their respective authorities, regarding Federal approvals in accordance with the following timelines:

- (A) Not later than one year after acceptance of a completed project application when an environmental assessment and finding of no significant impact is determined to be the appropriate level of review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
(B) Not later than one year and 30 days after the close of the public comment period for a draft environmental impact statement under the

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1 National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.),
2 when an environmental impact statement is required under the same.
3 (5) CONSOLIDATED ADMINISTRATIVE RECORD- Maintain a
4 consolidated administrative record of the information assembled and used by
5 the cooperating agencies as the basis for agency decisions.
6 (6) PROJECT DATA RECORDS- To the extent practicable and consistent with
7 Federal law, ensure that all project data is submitted and maintained in
8 generally accessible electronic format, compile, and where authorized under
9 existing law, make available such project data to cooperating agencies, the
10 qualifying project applicant, and to the public.
11 (7) PROJECT MANAGER- Appoint a project manager for each qualifying
12 project. The project manager shall have authority to oversee the project and to
13 facilitate the issuance of the relevant final authorizing documents, and shall be
14 responsible for ensuring fulfillment of all Bureau responsibilities set forth in
15 this section and all cooperating agency responsibilities under section 5.

16 (d) Cooperating Agency Responsibilities.

17 (a) Adherence to Bureau Schedule- Upon notification of an application for a qualifying
18 project, all cooperating agencies shall submit to the Bureau a timeframe under which
19 the cooperating agency reasonably considers it will be able to complete its authorizing
20 responsibilities. The Bureau shall use the timeframe submitted under this subsection to
21 establish the project schedule under section 4, and the cooperating agencies shall
22 adhere to the project schedule established by the Bureau.
23 (b) Environmental Record- Cooperating agencies shall submit to the Bureau all
24 environmental review material produced or compiled in the course of carrying out
25 activities required under Federal law consistent with the project schedule established
26 by the Bureau.
27 (c) Data Submission- To the extent practicable and consistent with Federal law, the
28 cooperating agencies shall submit all relevant project data to the Bureau in a generally
29 accessible electronic format subject to the project schedule set forth by the Bureau.

30 (e) Funding to Process Permits.

31 (a) In General- The Secretary, after public notice in accordance with the
32 Administrative Procedures Act (5 U.S.C. 553), may accept and expend funds
33 contributed by a non-Federal public entity to expedite the evaluation of a permit of that
34 entity related to a qualifying project or activity for a public purpose under the
35 jurisdiction of the Department of the Interior.
36 (b) Effect on Permitting-
37 (1) IN GENERAL- In carrying out this section, the Secretary shall ensure that
38 the use of funds accepted under subsection (a) will not impact impartial
39 decisionmaking with respect to permits, either substantively or procedurally.
40 (2) EVALUATION OF PERMITS- In carrying out this section, the Secretary
41 shall ensure that the evaluation of permits carried out using funds accepted
42 under this section shall--

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(A) be reviewed by the Regional Director of the Bureau of Reclamation, or the Regional Director's designee, of the region in which the qualifying project or activity is located; and

(B) use the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section.

(3) IMPARTIAL DECISIONMAKING- In carrying out this section, the Secretary and the cooperating agencies receiving funds under this section for qualifying projects shall ensure that the use of the funds accepted under this section for such projects shall not--

(A) impact impartial decisionmaking with respect to the issuance of permits, either substantively or procedurally; or

(B) diminish, modify, or otherwise affect the statutory or regulatory authorities of such agencies.

(c) Limitation on Use of Funds- None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under subsection (b)(2)(A).

(d) Public Availability- The Secretary shall ensure that all final permit decisions carried out using funds authorized under this section are made available to the public, including on the Internet.

Sec. 7021. PREPAYMENT OF CERTAIN REPAYMENT CONTRACTS

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(1) ENVIRONMENTAL IMPACT STATEMENT- The term 'environmental impact statement' means the detailed statement of environmental impacts of a project required to be prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) ENVIRONMENTAL REVIEW PROCESS-

(A) IN GENERAL- The term 'environmental review process' means the process of preparing an environmental impact statement, environmental assessment, categorical exclusion, or other document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for a project study.

(B) INCLUSIONS- The term 'environmental review process' includes the process for and completion of any environmental permit, approval, review, or study required for a project study under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) FEDERAL JURISDICTIONAL AGENCY- The term 'Federal jurisdictional agency' means a Federal agency with jurisdiction delegated by law, regulation, order, or otherwise over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a project study under applicable Federal laws (including regulations).

(4) FEDERAL LEAD AGENCY- The term 'Federal lead agency' means the Bureau of Reclamation.

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(5) PROJECT- The term 'project' means a surface water project to be carried out or funded by the Secretary pursuant to the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).

(6) PROJECT SPONSOR- The term 'project sponsor' means a State, regional, or local authority or other qualifying entity, such as a water conservation district, irrigation district, water conservancy district, or rural water district or association.

(7) PROJECT STUDY- The term 'project study' means a feasibility study for a project carried out pursuant to the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).

(8) SECRETARY- The term 'Secretary' means the Secretary of the Interior.

(9) SURFACE WATER STORAGE- The term 'surface water storage' means any surface water reservoir or impoundment that would be owned, funded, or operated by the Bureau of Reclamation.

(b) ACCELERATION OF STUDIES.

(a) In General- To the extent practicable, a project study initiated by the Secretary, after the date of enactment of this Act, under the Reclamation Act of 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto, shall--

(1) result in the completion of a final feasibility report not later than 3 years after the date of initiation;

(2) have a maximum Federal cost of \$3,000,000; and

(3) ensure that personnel from the local project area, region, and headquarters levels of the Bureau of Reclamation concurrently conduct the review required under that section.

(b) Extension- If the Secretary determines that a project study described in subsection (a) will not be conducted in accordance with subsection (a), the Secretary, not later than 30 days after the date of making the determination, shall--

(1) prepare an updated project study schedule and cost estimate;

(2) notify the non-Federal project cost-sharing partner that the project study has been delayed; and

(3) provide written notice to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate as to the reasons the requirements of subsection (a) are not attainable.

(c) Exception-

(1) IN GENERAL- Notwithstanding the requirements of subsection (a), the Secretary may extend the timeline of a project study by a period not to exceed 3 years, if the Secretary determines that the project study is too complex to comply with the requirements of subsection (a).

(2) FACTORS- In making a determination that a study is too complex to comply with the requirements of subsection (a), the Secretary shall consider--

(A) the type, size, location, scope, and overall cost of the project;

(B) whether the project will use any innovative design or construction techniques;

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(C) whether the project will require significant action by other Federal, State, or local agencies;

(D) whether there is significant public dispute as to the nature or effects of the project; and

(E) whether there is significant public dispute as to the economic or environmental costs or benefits of the project.

(3) NOTIFICATION- Each time the Secretary makes a determination under this subsection, the Secretary shall provide written notice to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate as to the results of that determination, including an identification of the specific 1 or more factors used in making the determination that the project is complex.

(4) LIMITATION- The Secretary shall not extend the timeline for a project study for a period of more than 7 years, and any project study that is not completed before that date shall no longer be authorized.

(d) Reviews- Not later than 90 days after the date of the initiation of a project study described in subsection (a), the Secretary shall--

(1) take all steps necessary to initiate the process for completing federally mandated reviews that the Secretary is required to complete as part of the study, including the environmental review process under section 5;

(2) convene a meeting of all Federal, tribal, and State agencies identified under section 5(d) that may--

(A) have jurisdiction over the project;

(B) be required by law to conduct or issue a review, analysis, opinion, or statement for the project study; or

(C) be required to make a determination on issuing a permit, license, or other approval or decision for the project study; and

(3) take all steps necessary to provide information that will enable required reviews and analyses related to the project to be conducted by other agencies in a thorough and timely manner.

(e) Interim Report- Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and make publicly available a report that describes--

(1) the status of the implementation of the planning process under this section, including the number of participating projects;

(2) a review of project delivery schedules, including a description of any delays on those studies initiated prior to the date of the enactment of this Act; and

(3) any recommendations for additional authority necessary to support efforts to expedite the project.

(f) Final Report- Not later than 4 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and make publicly available a report that describes--

(1) the status of the implementation of this section, including a description of each project study subject to the requirements of this section;

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(2) the amount of time taken to complete each project study; and
(3) any recommendations for additional authority necessary to support efforts to expedite the project study process, including an analysis of whether the limitation established by subsection (a)(2) needs to be adjusted to address the impacts of inflation.

(c) EXPEDITED COMPLETION OF REPORTS.

The Secretary shall--

(1) expedite the completion of any ongoing project study initiated before the date of enactment of this Act; and

(2) if the Secretary determines that the project is justified in a completed report, proceed directly to preconstruction planning, engineering, and design of the project in accordance with the Reclamation Act of 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto.

(d) PROJECT ACCELERATION.

(a) Applicability-

(1) IN GENERAL- This section shall apply to each project study that is initiated after the date of enactment of this Act and for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) FLEXIBILITY- Any authority granted under this section may be exercised, and any requirement established under this section may be satisfied, for the conduct of an environmental review process for a project study, a class of project studies, or a program of project studies.

(3) LIST OF PROJECT STUDIES-

(A) IN GENERAL- The Secretary shall annually prepare, and make publicly available, a list of all project studies that the Secretary has determined--

(i) meets the standards described in paragraph (1); and
(ii) does not have adequate funding to make substantial progress toward the completion of the project study.

(B) INCLUSIONS- The Secretary shall include for each project study on the list under subparagraph (A) a description of the estimated amounts necessary to make substantial progress on the project study.

(b) Project Review Process-

(1) IN GENERAL- The Secretary shall develop and implement a coordinated environmental review process for the development of project studies.

(2) COORDINATED REVIEW- The coordinated environmental review process described in paragraph (1) shall require that any review, analysis, opinion, statement, permit, license, or other approval or decision issued or made by a Federal, State, or local governmental agency or an Indian tribe for a project study described in subsection (b) be conducted, to the maximum extent practicable, concurrently with any other applicable governmental agency or Indian tribe.

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(3) TIMING- The coordinated environmental review process under this subsection shall be completed not later than the date on which the Secretary, in consultation and concurrence with the agencies identified under section 5(d), establishes with respect to the project study.

(c) Lead Agencies-

(1) JOINT LEAD AGENCIES-

(A) IN GENERAL- Subject to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the requirements of section 1506.8 of title 40, Code of Federal Regulations (or successor regulations), including the concurrence of the proposed joint lead agency, a project sponsor may serve as the joint lead agency.

(B) PROJECT SPONSOR AS JOINT LEAD AGENCY- A project sponsor that is a State or local governmental entity may--

(i) with the concurrence of the Secretary, serve as a joint lead agency with the Federal lead agency for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) prepare any environmental review process document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) required in support of any action or approval by the Secretary if--

(I) the Secretary provides guidance in the preparation process and independently evaluates that document;

(II) the project sponsor complies with all requirements applicable to the Secretary under--

(aa) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(bb) any regulation implementing that Act; and

(cc) any other applicable Federal law; and

(III) the Secretary approves and adopts the document before the Secretary takes any subsequent action or makes any approval based on that document, regardless of whether the action or approval of the Secretary results in Federal funding.

(2) DUTIES- The Secretary shall ensure that--

(A) the project sponsor complies with all design and mitigation commitments made jointly by the Secretary and the project sponsor in any environmental document prepared by the project sponsor in accordance with this subsection; and

(B) any environmental document prepared by the project sponsor is appropriately supplemented to address any changes to the project the Secretary determines are necessary.

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1 (3) ADOPTION AND USE OF DOCUMENTS- Any environmental document
2 prepared in accordance with this subsection shall be adopted and used by any
3 Federal agency making any determination related to the project study to the same
4 extent that the Federal agency could adopt or use a document prepared by another
5 Federal agency under--

6 (A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et
7 seq.); and

8 (B) parts 1500 through 1508 of title 40, Code of Federal Regulations (or
9 successor regulations).

10 (4) ROLES AND RESPONSIBILITY OF LEAD AGENCY- With respect to the
11 environmental review process for any project study, the Federal lead agency shall
12 have authority and responsibility--

13 (A) to take such actions as are necessary and proper and within the
14 authority of the Federal lead agency to facilitate the expeditious resolution
15 of the environmental review process for the project study; and

16 (B) to prepare or ensure that any required environmental impact statement
17 or other environmental review document for a project study required to be
18 completed under the National Environmental Policy Act of 1969 (42
19 U.S.C. 4321 et seq.) is completed in accordance with this section and
20 applicable Federal law.

21 (d) Participating and Cooperating Agencies-

22 (1) IDENTIFICATION OF JURISDICTIONAL AGENCIES- With respect to
23 carrying out the environmental review process for a project study, the Secretary
24 shall identify, as early as practicable in the environmental review process, all
25 Federal, State, and local government agencies and Indian tribes that may--

26 (A) have jurisdiction over the project;

27 (B) be required by law to conduct or issue a review, analysis, opinion, or
28 statement for the project study; or

29 (C) be required to make a determination on issuing a permit, license, or
30 other approval or decision for the project study.

31 (2) STATE AUTHORITY- If the environmental review process is being
32 implemented by the Secretary for a project study within the boundaries of a State,
33 the State, consistent with State law, may choose to participate in the process and
34 to make subject to the process all State agencies that--

35 (A) have jurisdiction over the project;

36 (B) are required to conduct or issue a review, analysis, opinion, or
37 statement for the project study; or

38 (C) are required to make a determination on issuing a permit, license, or
39 other approval or decision for the project study.

40 (3) INVITATION-

41 (A) IN GENERAL- The Federal lead agency shall invite, as early as
42 practicable in the environmental review process, any agency identified
43 under paragraph (1) to become a participating or cooperating agency, as
44 applicable, in the environmental review process for the project study.

45 (B) DEADLINE- An invitation to participate issued under subparagraph

46 (A) shall set a deadline by which a response to the invitation shall be

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submitted, which may be extended by the Federal lead agency for good cause.

(4) PROCEDURES- Section 1501.6 of title 40, Code of Federal Regulations (as in effect on the date of enactment of the Bureau of Reclamation Surface Water Storage Streamlining Act) shall govern the identification and the participation of a cooperating agency.

(5) FEDERAL COOPERATING AGENCIES- Any Federal agency that is invited by the Federal lead agency to participate in the environmental review process for a project study shall be designated as a cooperating agency by the Federal lead agency unless the invited agency informs the Federal lead agency, in writing, by the deadline specified in the invitation that the invited agency--

- (A)(i) has no jurisdiction or authority with respect to the project;
- (ii) has no expertise or information relevant to the project; or
- (iii) does not have adequate funds to participate in the project; and
- (B) does not intend to submit comments on the project.

(6) ADMINISTRATION- A participating or cooperating agency shall comply with this section and any schedule established under this section.

(7) EFFECT OF DESIGNATION- Designation as a participating or cooperating agency under this subsection shall not imply that the participating or cooperating agency--

- (A) supports a proposed project; or
- (B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

(8) CONCURRENT REVIEWS- Each participating or cooperating agency shall--

- (A) carry out the obligations of that agency under other applicable law concurrently and in conjunction with the required environmental review process, unless doing so would prevent the participating or cooperating agency from conducting needed analysis or otherwise carrying out those obligations; and
- (B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

(e) Programmatic Compliance-

(1) IN GENERAL- The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that--

- (A) eliminates repetitive discussions of the same issues;
- (B) focuses on the actual issues ripe for analyses at each level of review;
- (C) establishes a formal process for coordinating with participating and cooperating agencies, including the creation of a list of all data that are needed to carry out an environmental review process; and
- (D) complies with--

- (i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
- (ii) all other applicable laws.

(2) REQUIREMENTS- In carrying out paragraph (1), the Secretary shall--

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1 (A) as the first step in drafting guidance under that paragraph, consult with
2 relevant Federal, State, and local governmental agencies, Indian tribes,
3 and the public on the appropriate use and scope of the programmatic
4 approaches;

5 (B) emphasize the importance of collaboration among relevant Federal,
6 State, and local governmental agencies, and Indian tribes in undertaking
7 programmatic reviews, especially with respect to including reviews with a
8 broad geographical scope;

9 (C) ensure that the programmatic reviews--

10 (i) promote transparency, including of the analyses and data used
11 in the environmental review process, the treatment of any deferred
12 issues raised by Federal, State, and local governmental agencies,
13 Indian tribes, or the public, and the temporal and special scales to
14 be used to analyze those issues;

15 (ii) use accurate and timely information in the environmental
16 review process, including--

17 (I) criteria for determining the general duration of the
18 usefulness of the review; and

19 (II) the timeline for updating any out-of-date review;

20 (iii) describe--

21 (I) the relationship between programmatic analysis and
22 future tiered analysis; and

23 (II) the role of the public in the creation of future tiered
24 analysis; and

25 (iv) are available to other relevant Federal, State, and local
26 governmental agencies, Indian tribes, and the public;

27 (D) allow not fewer than 60 days of public notice and comment on any
28 proposed guidance; and

29 (E) address any comments received under subparagraph (D).

30 (f) Coordinated Reviews-

31 (1) COORDINATION PLAN-

32 (A) ESTABLISHMENT- The Federal lead agency shall, after consultation
33 with and with the concurrence of each participating and cooperating
34 agency and the project sponsor or joint lead agency, as applicable,
35 establish a plan for coordinating public and agency participation in, and
36 comment on, the environmental review process for a project study or a
37 category of project studies.

38 (B) SCHEDULE-

39 (i) IN GENERAL- As soon as practicable but not later than 45
40 days after the close of the public comment period on a draft
41 environmental impact statement, the Federal lead agency, after
42 consultation with and the concurrence of each participating and
43 cooperating agency and the project sponsor or joint lead agency, as
44 applicable, shall establish, as part of the coordination plan
45 established in subparagraph (A), a schedule for completion of the
46 environmental review process for the project study.

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(ii) FACTORS FOR CONSIDERATION- In establishing a schedule, the Secretary shall consider factors such as--

(I) the responsibilities of participating and cooperating agencies under applicable laws;

(II) the resources available to the project sponsor, joint lead agency, and other relevant Federal and State agencies, as applicable;

(III) the overall size and complexity of the project;

(IV) the overall schedule for and cost of the project; and

(V) the sensitivity of the natural and historical resources that could be affected by the project.

(iii) MODIFICATIONS- The Secretary may--

(I) lengthen a schedule established under clause (i) for good cause; and

(II) shorten a schedule only with concurrence of the affected participating and cooperating agencies and the project sponsor or joint lead agency, as applicable.

(iv) DISSEMINATION- A copy of a schedule established under clause (i) shall be--

(I) provided to each participating and cooperating agency and the project sponsor or joint lead agency, as applicable; and

(II) made available to the public.

(2) COMMENT DEADLINES- The Federal lead agency shall establish the following deadlines for comment during the environmental review process for a project study:

(A) DRAFT ENVIRONMENTAL IMPACT STATEMENTS- For comments by Federal and States agencies and the public on a draft environmental impact statement, a period of not more than 60 days after publication in the Federal Register of notice of the date of public availability of the draft environmental impact statement, unless--

(i) a different deadline is established by agreement of the Federal lead agency, the project sponsor or joint lead agency, as applicable, and all participating and cooperating agencies; or

(ii) the deadline is extended by the Federal lead agency for good cause.

(B) OTHER ENVIRONMENTAL REVIEW PROCESSES- For all other comment periods established by the Federal lead agency for agency or public comments in the environmental review process, a period of not more than 30 days after the date on which the materials on which comment is requested are made available, unless--

(i) a different deadline is established by agreement of the Federal lead agency, the project sponsor, or joint lead agency, as applicable, and all participating and cooperating agencies; or

(ii) the deadline is extended by the Federal lead agency for good cause.

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1 (3) DEADLINES FOR DECISIONS UNDER OTHER LAWS- In any case in
2 which a decision under any Federal law relating to a project study, including the
3 issuance or denial of a permit or license, is required to be made by the date
4 described in subsection (h)(5)(B), the Secretary shall submit to the Committee on
5 Natural Resources of the House of Representatives and the Committee on Energy
6 and Natural Resources of the Senate--

7 (A) as soon as practicable after the 180-day period described in subsection
8 (h)(5)(B), an initial notice of the failure of the Federal agency to make the
9 decision; and

10 (B) every 60 days thereafter until such date as all decisions of the Federal
11 agency relating to the project study have been made by the Federal
12 agency, an additional notice that describes the number of decisions of the
13 Federal agency that remain outstanding as of the date of the additional
14 notice.

15 (4) INVOLVEMENT OF THE PUBLIC- Nothing in this subsection reduces any
16 time period provided for public comment in the environmental review process
17 under applicable Federal law (including regulations).

18 (5) TRANSPARENCY REPORTING-

19 (A) REPORTING REQUIREMENTS- Not later than 1 year after the date
20 of enactment of this Act, the Secretary shall establish and maintain an
21 electronic database and, in coordination with other Federal and State
22 agencies, issue reporting requirements to make publicly available the
23 status and progress with respect to compliance with applicable
24 requirements of the National Environmental Policy Act of 1969 (42
25 U.S.C. 4321 et seq.) and any other Federal, State, or local approval or
26 action required for a project study for which this section is applicable.

27 (B) PROJECT STUDY TRANSPARENCY- Consistent with the
28 requirements established under subparagraph (A), the Secretary shall
29 make publicly available the status and progress of any Federal, State, or
30 local decision, action, or approval required under applicable laws for each
31 project study for which this section is applicable.

32 (g) Issue Identification and Resolution-

33 (1) COOPERATION- The Federal lead agency, the cooperating agencies, and any
34 participating agencies shall work cooperatively in accordance with this section to
35 identify and resolve issues that could delay completion of the environmental
36 review process or result in the denial of any approval required for the project
37 study under applicable laws.

38 (2) FEDERAL LEAD AGENCY RESPONSIBILITIES-

39 (A) IN GENERAL- The Federal lead agency shall make information
40 available to the cooperating agencies and participating agencies as early as
41 practicable in the environmental review process regarding the
42 environmental and socioeconomic resources located within the project
43 area and the general locations of the alternatives under consideration.

44 (B) DATA SOURCES- The information under subparagraph (A) may be
45 based on existing data sources, including geographic information systems
46 mapping.

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(3) COOPERATING AND PARTICIPATING AGENCY RESPONSIBILITIES-
Based on information received from the Federal lead agency, cooperating and participating agencies shall identify, as early as practicable, any issues of concern regarding the potential environmental or socioeconomic impacts of the project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project study.

(4) ACCELERATED ISSUE RESOLUTION AND ELEVATION-

(A) IN GENERAL- On the request of a participating or cooperating agency or project sponsor, the Secretary shall convene an issue resolution meeting with the relevant participating and cooperating agencies and the project sponsor or joint lead agency, as applicable, to resolve issues that may--

- (i) delay completion of the environmental review process; or
- (ii) result in denial of any approval required for the project study under applicable laws.

(B) MEETING DATE- A meeting requested under this paragraph shall be held not later than 21 days after the date on which the Secretary receives the request for the meeting, unless the Secretary determines that there is good cause to extend that deadline.

(C) NOTIFICATION- On receipt of a request for a meeting under this paragraph, the Secretary shall notify all relevant participating and cooperating agencies of the request, including the issue to be resolved and the date for the meeting.

(D) ELEVATION OF ISSUE RESOLUTION- If a resolution cannot be achieved within the 30-day period beginning on the date of a meeting under this paragraph and a determination is made by the Secretary that all information necessary to resolve the issue has been obtained, the Secretary shall forward the dispute to the heads of the relevant agencies for resolution.

(E) CONVENTION BY SECRETARY- The Secretary may convene an issue resolution meeting under this paragraph at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under subparagraph (A).

(5) FINANCIAL PENALTY PROVISIONS-

(A) IN GENERAL- A Federal jurisdictional agency shall complete any required approval or decision for the environmental review process on an expeditious basis using the shortest existing applicable process.

(B) FAILURE TO DECIDE-

(i) IN GENERAL-

(I) TRANSFER OF FUNDS- If a Federal jurisdictional agency fails to render a decision required under any Federal law relating to a project study that requires the preparation of an environmental impact statement or environmental assessment, including the issuance or denial of a permit, license, statement, opinion, or other approval by the date described in clause (ii), the amount of funds made available

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1 to support the office of the head of the Federal
2 jurisdictional agency shall be reduced by an amount of
3 funding equal to the amount specified in item (aa) or (bb)
4 of subclause (II), and those funds shall be made available to
5 the division of the Federal jurisdictional agency charged
6 with rendering the decision by not later than 1 day after the
7 applicable date under clause (ii), and once each week
8 thereafter until a final decision is rendered, subject to
9 subparagraph (C).
10 (II) AMOUNT TO BE TRANSFERRED- The amount
11 referred to in subclause (I) is--

12 (aa) \$20,000 for any project study requiring the preparation of an environmental assessment or
13 environmental impact statement; or

14 (bb) \$10,000 for any project study requiring any type of review under the National
15 Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) other than an environmental
16 assessment or environmental impact statement.

17 (ii) DESCRIPTION OF DATE- The date referred to in clause (i) is
18 the later of--

19 (I) the date that is 180 days after the date on which an
20 application for the permit, license, or approval is complete;
21 and
22 (II) the date that is 180 days after the date on which the
23 Federal lead agency issues a decision on the project under
24 the National Environmental Policy Act of 1969 (42 U.S.C.
25 4321 et seq.).

26 (C) LIMITATIONS-

27 (i) IN GENERAL- No transfer of funds under subparagraph (B)
28 relating to an individual project study shall exceed, in any fiscal
29 year, an amount equal to 1 percent of the funds made available for
30 the applicable agency office.

31 (ii) FAILURE TO DECIDE- The total amount transferred in a
32 fiscal year as a result of a failure by an agency to make a decision
33 by an applicable deadline shall not exceed an amount equal to 5
34 percent of the funds made available for the applicable agency
35 office for that fiscal year.

36 (iii) AGGREGATE- Notwithstanding any other provision of law,
37 for each fiscal year, the aggregate amount of financial penalties
38 assessed against each applicable agency office under this Act and
39 any other Federal law as a result of a failure of the agency to make
40 a decision by an applicable deadline for environmental review,
41 including the total amount transferred under this paragraph, shall
42 not exceed an amount equal to 9.5 percent of the funds made
43 available for the agency office for that fiscal year.

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(D) NO FAULT OF AGENCY-

(i) **IN GENERAL-** A transfer of funds under this paragraph shall not be made if the applicable agency described in subparagraph (A) notifies, with a supporting explanation, the Federal lead agency, cooperating agencies, and project sponsor, as applicable, that--

(I) the agency has not received necessary information or approvals from another entity in a manner that affects the ability of the agency to meet any requirements under Federal, State, or local law;

(II) significant new information, including from public comments, or circumstances, including a major modification to an aspect of the project, requires additional analysis for the agency to make a decision on the project application; or

(III) the agency lacks the financial resources to complete the review under the scheduled timeframe, including a description of the number of full-time employees required to complete the review, the amount of funding required to complete the review, and a justification as to why not enough funding is available to complete the review by the deadline.

(ii) **LACK OF FINANCIAL RESOURCES-** If the agency provides notice under clause (i)(III), the Inspector General of the agency shall--

(I) conduct a financial audit to review the notice; and

(II) not later than 90 days after the date on which the review described in subclause (I) is completed, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on the notice.

(E) LIMITATION- The Federal agency from which funds are transferred pursuant to this paragraph shall not reprogram funds to the office of the head of the agency, or equivalent office, to reimburse that office for the loss of the funds.

(F) EFFECT OF PARAGRAPH- Nothing in this paragraph affects or limits the application of, or obligation to comply with, any Federal, State, local, or tribal law.

(h) Memorandum of Agreements for Early Coordination-

(1) SENSE OF CONGRESS- It is the sense of Congress that--

(A) the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process should cooperate with each other, State and local agencies, and Indian tribes on environmental review and Bureau of Reclamation project delivery activities at the earliest practicable time to avoid delays and duplication of effort later in the process, prevent

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potential conflicts, and ensure that planning and project development decisions reflect environmental values; and

(B) the cooperation referred to in subparagraph (A) should include the development of policies and the designation of staff that advise planning agencies and project sponsors of studies or other information foreseeably required for later Federal action and early consultation with appropriate State and local agencies and Indian tribes.

(2) TECHNICAL ASSISTANCE- If requested at any time by a State or project sponsor, the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process, shall, to the maximum extent practicable and appropriate, as determined by the agencies, provide technical assistance to the State or project sponsor in carrying out early coordination activities.

(3) MEMORANDUM OF AGENCY AGREEMENT- If requested at any time by a State or project sponsor, the Federal lead agency, in consultation with other Federal agencies with relevant jurisdiction in the environmental review process, may establish memoranda of agreement with the project sponsor, Indian tribes, State and local governments, and other appropriate entities to carry out the early coordination activities, including providing technical assistance in identifying potential impacts and mitigation issues in an integrated fashion.

(i) Limitations- Nothing in this section preempts or interferes with--

(1) any obligation to comply with the provisions of any Federal law, including--

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) any other Federal environmental law;

(2) the reviewability of any final Federal agency action in a court of the United States or in the court of any State;

(3) any requirement for seeking, considering, or responding to public comment; or

(4) any power, jurisdiction, responsibility, duty, or authority that a Federal, State, or local governmental agency, Indian tribe, or project sponsor has with respect to carrying out a project or any other provision of law applicable to projects.

(j) Timing of Claims-

(1) TIMING-

(A) IN GENERAL- Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or other approval issued by a Federal agency for a project study shall be barred unless the claim is filed not later than 3 years after publication of a notice in the Federal Register announcing that the permit, license, or other approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law that allows judicial review.

(B) APPLICABILITY- Nothing in this subsection creates a right to judicial review or places any limit on filing a claim that a person has violated the terms of a permit, license, or other approval.

(2) NEW INFORMATION-

(A) IN GENERAL- The Secretary shall consider new information received after the close of a comment period if the information satisfies

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the requirements for a supplemental environmental impact statement under title 40, Code of Federal Regulations (including successor regulations).

(B) SEPARATE ACTION- The preparation of a supplemental environmental impact statement or other environmental document, if required under this section, shall be considered a separate final agency action and the deadline for filing a claim for judicial review of the action shall be 3 years after the date of publication of a notice in the Federal Register announcing the action relating to such supplemental environmental impact statement or other environmental document.

(k) Categorical Exclusions-

(1) IN GENERAL- Not later than 180 days after the date of enactment of this Act, the Secretary shall--

(A) survey the use by the Bureau of Reclamation of categorical exclusions in projects since 2005;

(B) publish a review of the survey that includes a description of--

(i) the types of actions that were categorically excluded or could be the basis for developing a new categorical exclusion; and

(ii) any requests previously received by the Secretary for new categorical exclusions; and

(C) solicit requests from other Federal agencies and project sponsors for new categorical exclusions.

(2) NEW CATEGORICAL EXCLUSIONS- Not later than 1 year after the date of enactment of this Act, if the Secretary has identified a category of activities that merit establishing a categorical exclusion that did not exist on the day before the date of enactment this Act based on the review under paragraph (1), the Secretary shall publish a notice of proposed rulemaking to propose that new categorical exclusion, to the extent that the categorical exclusion meets the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations (or successor regulation).

(l) Review of Project Acceleration Reforms-

(1) IN GENERAL- The Comptroller General of the United States shall--

(A) assess the reforms carried out under this section; and

(B) not later than 5 years and not later than 10 years after the date of enactment of this Act, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that describes the results of the assessment.

(2) CONTENTS- The reports under paragraph (1) shall include an evaluation of impacts of the reforms carried out under this section on--

(A) project delivery;

(B) compliance with environmental laws; and

(C) the environmental impact of projects.

(m) Performance Measurement- The Secretary shall establish a program to measure and report on progress made toward improving and expediting the planning and environmental review process.

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(n) Categorical Exclusions in Emergencies- For the repair, reconstruction, or rehabilitation of a Bureau of Reclamation surface water storage project that is in operation or under construction when damaged by an event or incident that results in a declaration by the President of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Secretary shall treat such repair, reconstruction, or rehabilitation activity as a class of action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations (or successor regulations), if the repair or reconstruction activity is--
(1) in the same location with the same capacity, dimensions, and design as the original Bureau of Reclamation surface water storage project as before the declaration described in this section; and
(2) commenced within a 2-year period beginning on the date of a declaration described in this subsection.

(e) ANNUAL REPORT TO CONGRESS.

(a) In General- Not later than February 1 of each year, the Secretary shall develop and submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate an annual report, to be entitled 'Report to Congress on Future Surface Water Storage Development', that identifies the following:

(1) PROJECT REPORTS- Each project report that meets the criteria established in subsection (c)(1)(A).

(2) PROPOSED PROJECT STUDIES- Any proposed project study submitted to the Secretary by a non-Federal interest pursuant to subsection (b) that meets the criteria established in subsection (c)(1)(A).

(3) PROPOSED MODIFICATIONS- Any proposed modification to an authorized surface water storage project or project study that meets the criteria established in subsection (c)(1)(A) that--

(A) is submitted to the Secretary by a non-Federal interest pursuant to subsection (b); or

(B) is identified by the Secretary for authorization.

(b) Requests for Proposals-

(1) PUBLICATION- Not later than May 1 of each year, the Secretary shall publish in the Federal Register a notice requesting proposals from non-Federal interests for proposed project studies and proposed modifications to authorized surface water storage projects and project studies to be included in the annual report.

(2) DEADLINE FOR REQUESTS- The Secretary shall include in each notice required by this subsection a requirement that non-Federal interests submit to the Secretary any proposals described in paragraph (1) by not later than 120 days after the date of publication of the notice in the Federal Register in order for the proposals to be considered for inclusion in the annual report.

(3) NOTIFICATION- On the date of publication of each notice required by this subsection, the Secretary shall--

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(A) make the notice publicly available, including on the Internet; and
(B) provide written notification of the publication to the Committee on
Natural Resources of the House of Representatives and the Committee on
Energy and Natural Resources of the Senate.

(c) Contents-

(1) PROJECT REPORTS, PROPOSED PROJECT STUDIES, AND PROPOSED
MODIFICATIONS-

(A) CRITERIA FOR INCLUSION IN REPORT- The Secretary shall
include in the annual report only those project reports, proposed project
studies, and proposed modifications to authorized surface water storage
projects and project studies that--

(i) are related to the missions and authorities of the Bureau of
Reclamation;

(ii) require specific congressional authorization, including by an
Act of Congress;

(iii) have not been congressionally authorized;

(iv) have not been included in any previous annual report; and

(v) if authorized, could be carried out by the Bureau of
Reclamation.

(B) DESCRIPTION OF BENEFITS-

(i) DESCRIPTION- The Secretary shall describe in the annual
report, to the extent applicable and practicable, for each proposed
project study and proposed modification to an authorized water
resources development project or project study included in the
annual report, the benefits, as described in clause (ii), of each such
study or proposed modification.

(ii) BENEFITS- The benefits (or expected benefits, in the case of a
proposed project study) described in this clause are benefits to--

(I) the protection of human life and property;

(II) improvement to domestic irrigated water and power
supplies;

(III) the national economy;

(IV) the environment; or

(V) the national security interests of the United States.

(C) IDENTIFICATION OF OTHER FACTORS- The Secretary shall
identify in the annual report, to the extent practicable--

(i) for each proposed project study included in the annual report,
the non-Federal interest that submitted the proposed project study
pursuant to subsection (b); and

(ii) for each proposed project study and proposed modification to a
surface water storage project or project study included in the
annual report, whether the non-Federal interest has demonstrated--

(I) that local support exists for the proposed project study
or proposed modification to an authorized surface water
storage project or project study (including the surface water
storage development project that is the subject of the

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proposed feasibility study or the proposed modification to an authorized project study); and
(II) the financial ability to provide the required non-Federal cost share.

(2) TRANSPARENCY- The Secretary shall include in the annual report, for each project report, proposed project study, and proposed modification to a surface water storage project or project study included under paragraph (1)(A)--

(A) the name of the associated non-Federal interest, including the name of any non-Federal interest that has contributed, or is expected to contribute, a non-Federal share of the cost of--

(i) the project report;

(ii) the proposed project study;

(iii) the authorized project study for which the modification is proposed; or

(iv) construction of--

(I) the surface water storage project that is the subject of--

(aa) the water report;

(bb) the proposed project study; or

(cc) the authorized project study for which a modification is proposed; or

(II) the proposed modification to a surface water storage development project;

(B) a letter or statement of support for the water report, proposed project study, or proposed modification to an authorized surface water storage development project or project study from each associated non-Federal interest;

(C) the purpose of the feasibility report, proposed feasibility study, or proposed modification to an authorized surface water storage project or project study;

(D) an estimate, to the extent practicable, of the Federal, non-Federal, and total costs of--

(i) the proposed modification to an authorized project study; and

(ii) construction of--

(I) the surface water storage development project that is the subject of--

(aa) the project report; or

(bb) the authorized project study for which a modification is proposed, with respect to the change in costs resulting from such modification; or

(II) the proposed modification to an authorized surface water storage development project; and

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(E) an estimate, to the extent practicable, of the monetary and nonmonetary benefits of--
(i) the surface water storage development project that is the subject of--

(I) the project report; or
(II) the authorized project study for which a modification is proposed, with respect to the benefits of such modification;
or

(ii) the proposed modification to an authorized surface water storage development project.

(3) CERTIFICATION- The Secretary shall include in the annual report a certification stating that each feasibility report, proposed feasibility study, and proposed modification to a surface water storage project or project study included in the annual report meets the criteria established in paragraph (1)(A).

(4) APPENDIX- The Secretary shall include in the annual report an appendix listing the proposals submitted under subsection (b) that were not included in the annual report under paragraph (1)(A) and a description of why the Secretary determined that those proposals did not meet the criteria for inclusion under such paragraph.

(d) Special Rule for Initial Annual Report- Notwithstanding any other deadlines required by this section, the Secretary shall--

(1) not later than 60 days after the date of enactment of this Act, publish in the Federal Register a notice required by subsection (b)(1); and

(2) include in such notice a requirement that non-Federal interests submit to the Secretary any proposals described in subsection (b)(1) by not later than 120 days after the date of publication of such notice in the Federal Register in order for such proposals to be considered for inclusion in the first annual report developed by the Secretary under this section.

(e) Publication- Upon submission of an annual report to Congress, the Secretary shall make the annual report publicly available, including through publication on the Internet.

(f) Definition- In this section the term 'project report' means a final feasibility report developed under the Reclamation Act of 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto.

Sec. 7043. Environmental Procedures Streamlining

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall carry out a water infrastructure project delivery program (referred to in this section as the “program”).

(2) ASSUMPTION OF RESPONSIBILITY.—

(A) IN GENERAL.—Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to one or more eligible

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water infrastructure projects described in subparagraph (B) within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ELIGIBLE WATER INFRASTRUCTURE PROJECTS.—In this section the term “eligible water infrastructure projects” means projects for which a non-Federal entity has lead responsibility for approving the overall project, including projects for which federal agency permitting is required or some federal funding is provided.

(C) ADDITIONAL RESPONSIBILITY.—If a State assumes responsibility under subparagraph (A)—

- (i) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific project; but
- (ii) at the request of the State, the Secretary may also assign to the State, and the State may assume, the responsibilities of the Secretary with respect to 1 or more eligible water infrastructure projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(D) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.

(E) FEDERAL RESPONSIBILITY.—Any responsibility of the Secretary not explicitly assumed by the State by written agreement under this section shall remain the responsibility of the Secretary.

(F) NO EFFECT ON AUTHORITY.—Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency, other than the Department of the Interior, under applicable law (including regulations) with respect to a project.

(G) PRESERVATION OF FLEXIBILITY.—The Secretary may not require a State, as a condition of participation in the program, to forego project delivery methods that are otherwise permissible for projects.

(b) STATE PARTICIPATION.—

(1) PARTICIPATING STATES. — California is eligible to participate in the program.

(2) APPLICATION.—Not later than 270 days after the date of enactment, the Secretary shall amend, as appropriate, regulations that establish requirements relating to information required to be contained in an application of a State to participate in the program, including, at a minimum—

- (A) the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;
- (B) verification of the financial resources necessary to carry out the authority that may be granted under the program; and
- (C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the program, including copies of comments received from that solicitation.

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(3) PUBLIC NOTICE.—

(A) IN GENERAL.—The State that submits an application under this subsection shall give notice of the intent of the State to participate in the program not later than 30 days before the date of submission of the application.

(B) METHOD OF NOTICE AND SOLICITATION.—The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice law of the state.

(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under this section only if—

(A) the regulatory requirements under paragraph (2) have been met;

(B) the Secretary determines that the State has the capability, including financial and personnel, to assume the responsibility; and

(C) the head of the State agency having primary jurisdiction over water infrastructure matters enters into a written agreement with the Secretary described in subsection (c).

(5) OTHER FEDERAL AGENCY VIEWS.—If a State applies to assume a responsibility of the Secretary that would have required the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency before approving the application.

(c) WRITTEN AGREEMENT.—A written agreement under this section shall—

(1) be executed by the Governor or the top ranking water infrastructure official in the State who is charged with responsibility for water infrastructure construction;

(2) be in such form as the Secretary may prescribe;

(3) provide that the State—

(A) agrees to assume all or part of the responsibilities of the Secretary described in subsection (a);

(B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the State;

(C) certifies that State laws (including regulations) are in effect that authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed;

(4) require the State to provide to the Secretary any information that the Secretary considers necessary to ensure that the State is adequately carrying out the responsibilities assigned to the State;

(5) have a term of not more than 5 years; and

(6) be renewable.

(d) JURISDICTION.—

(1) IN GENERAL.—The United States district courts shall have exclusive jurisdiction over any civil action against a State for failure to carry out any responsibility of the State under this section.

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(2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary had the Secretary taken the actions in question.

(3) INTERVENTION.—The Secretary shall have the right to intervene in any action described in paragraph (1).

(e) EFFECT OF ASSUMPTION OF RESPONSIBILITY.— A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (j).

(f) LIMITATIONS ON AGREEMENTS.—Nothing in this section permits a State to assume any rulemaking authority of the Secretary under any Federal law.

(g) AUDITS.—

(1) IN GENERAL.—To ensure compliance by a State with any agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program under this section, the Secretary shall conduct—

(A) semiannual audits during each of the first 2 years of State participation; and

(B) annual audits during of the third and fourth years of State participation.

(2) PUBLIC AVAILABILITY AND COMMENT.—

(A) IN GENERAL.—An audit conducted under paragraph (1) shall be provided to the public for comment.

(B) RESPONSE.—Not later than 60 days after the date on which the period for public comment ends, the Secretary shall respond to public comments received under subparagraph (A).

(h) MONITORING. — After the fourth year of the participation of a State in the program, the Secretary shall monitor compliance by the State with the written agreement, including the provision by the State of financial resources to carry out the written agreement.

(j) TERMINATION. —

(1) TERMINATION BY SECRETARY.—The Secretary may terminate the participation of any State in the program if—

(A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;

(B) the Secretary provides to the State—

(i) notification of the determination of noncompliance; and

(ii) a period of at least 30 days during which to take such corrective action as the Secretary determines is necessary to comply with the applicable agreement; and

(C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by Secretary.

(2) TERMINATION BY THE STATE. — The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice by not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.

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Section 705 Water Rights Protections.

(a) Treatment of Water Rights.

The Secretary of the Interior and the Secretary of Agriculture--

(1) shall not condition the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on the transfer of any water right (including joint and sole ownership) directly to the United States, or any impairment of title, in whole or in part, granted or otherwise recognized under State law, by Federal or State adjudication, decree, or other judgment, or pursuant to any interstate water compact; and

(2) shall not require any water user (including any federally recognized Indian tribe) to apply for or acquire a water right in the name of the United States under State law as a condition of the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement.

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(b) Definition.

For purposes of this Act, the term 'water right' means any surface, groundwater, or storage use filed, permitted, certificated, confirmed, decreed, adjudicated, or otherwise recognized by a judicial proceeding or by the State in which the user acquires possession of the water or puts it to beneficial use. Such term shall include water rights for federally recognized Indian tribes.

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c) Impacts on Existing Authorities.

(1) Nothing in this Act limits or expands any existing legally recognized authority of the Secretaries to issue, grant, or condition any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on Federal lands subject to their respective jurisdictions.

(2) Nothing in this Act shall in any way interfere with existing or future Bureau of Reclamation contracts entered into pursuant to Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act).

(3) Nothing in this Act shall affect the implementation of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(4) Nothing in this Act limits or expands any existing reserved water rights of the Federal Government on lands administered by the Secretary of the Interior or the Secretary of Agriculture.

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(5) .Nothing in this Act limits or expands authorities pursuant to sections 4(e), 10(j), or 18 of the Federal Power Act (16 U.S.C. 797(e), 803(j), and 811).

(6) .Nothing in this Act limits or expands any existing reserved water right or treaty right of any federally recognized Indian tribe.

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From: Sarah Woolf

Sent: Saturday, November 22, 2014 11:07 AM

To: Cannon Michael

CC: Ara Azhderian; Aubrey Bettencourt; Chase Hurley; Chris & Anne Hurd; Chris White; Clare Foley; Dan Keppen; Dan Nelson; Daniel Errotabere; Dave Puglia; Dominic DiMare; Erik Hansen; Gayle Holman; Jennifer T. Buckman; Joel Nelsen; Louie Brown, Jr.; Maria Gutierrez; Mario Santoyo; Martin R. McIntyre; Mike Henry; Mike Wade; Roger A. Isom; Sean P. Geivet; Shawn Coburn; Steve Chedester; Susan Mussett; Tony Azevedo; William Bourdeau; Georgeanne White; Jim Nickel; Kent Stephens; Kimberly Brown; Loren Booth; Mark Watte; Melissa Poole; Paul Adams; Tom Barcellos; Nancy E Williams; Dennis Nuxoll; David Longly Bernhardt; Tom & Wendy Birmingham; John C. Harris; Jeff Bryant; Randy Houk

Subject: Re: Legislation

Cannon,

thank you for writing this letter. I think it is well done. i will be writing one this weekend to Senator Feinstein and others. Thank you for taking the lead.

Sarah Woolf

Water Wise

[REDACTED]
[REDACTED]

On Nov 21, 2014, at 5:25 PM, Cannon Michael <cannon@bfarm.com> wrote:

Hello all - happy Friday.

I wanted to pass along an email that I have sent to John Watts and some of Feinstein's staff. It was toned down a bit by someone whose input I respect, but I think it gets the message across. I am also working on a version to send to some of the House folks and Boxer's staff. I would urge each of you to do the same. From what I have heard email seems to be the best conduit as regular mail takes a long time to get through - I have also attached a sheet that has most of the contacts to send emails.

Please don't be silent on this - I don't think we need to blast anyone, but we definitely should be heard. It doesn't take much time.

james_peterson@feinstein.senate.gov

John_Watts@feinstein.senate.gov

Felix_Yeung@feinstein.senate.gov

----- Forwarded message -----

From: **Cannon Michael** <cannon@bfarm.com>

Date: Fri, Nov 21, 2014 at 5:15 PM

Subject: Legislation

To: "Watts, John" <

John_Watts@feinstein.senate.gov>

Cc: Felix Yeung <

Felix_Yeung@feinstein.senate.gov>, "Peterson, James (Feinstein)"

<james_peterson@feinstein.senate.gov>

John,

I am writing to express my profound disappointment with Senator Feinstein's decision to suspend her efforts on the California Drought Legislation. For many months I have been following the progress of the work on legislation and had hoped that everyone would find a way to come up with a final solution. My understanding has been that the California House members and staff have been actively engaged with you, Senator Feinstein, Senator Boxer and the respective staff.

Delaying the process for months is a critical blow for those that rely on water exports from the Delta. Without the needed operational changes that legislation could have provided, we will again see water from beneficial rains flow out to the ocean as we did during the first months of 2014. There are people using portable showers to clean themselves, trucks delivering water to homes, businesses shutting down - this is not just some farmers being affected, this is hundreds or thousands of people in the Central Valley. Along with the human crisis are the vast areas of "wetlands" that are not wet and valuable habitat that is being lost. The Pacific Flyway and migratory birds need water as well as the communities and farms.

Unfortunately, to end the legislative effort right after some negative responses from the environmental community and editorial boards gives the perception that they swayed the decision. The negotiations were tightly held specifically to avoid unnecessary feedback from groups that Senator Feinstein has admitted are not helpful. Clearly there are those who will oppose any measure that will improve water supply for those south of the

Delta. Negative feedback had to be expected and it is a shame that there is now the appearance that this pressure changed the course.

Senator Feinstein has been a leader in California water issues for many years and we need that leadership more than ever. I sincerely hope that talks will resume as soon as possible and that a solution will be reached.

Sincerely,

Cannon Michael
Bowles Farming Company
[209-252-1111](tel:209-252-1111) (Direct)

Please consider the Environment before printing this email.

=====

The information in this email and in any attachments is confidential and may be privileged. If you are not the intended recipient, please destroy this message, delete any copies held on your systems and notify the sender immediately. You should not retain, copy or use this email for any purpose, nor disclose all or any part of its content to any other person. Dissemination, distribution or copying of this email is strictly prohibited. All opinions, conclusions and other information contained in this email are not given or endorsed by Bowles Farming Company, unless expressly stated to the contrary.

=====

<Federal Contacts.xlsx>

From: Butler, Jessica
Sent: Wednesday, December 3, 2014 2:27 PM
To: Tom Birmingham; David L. Bernhardt
Subject: HR 5781 differs from 3964

Can you write me a quick blurb on the differences between the two bills? I'm sitting in rules on the bill now.
Thank you,
Jess

Jessica Butler
Senior Policy Advisor
Rep. David G. Valadao
202-225-4695

From: Weaver, Kiel
Sent: Thursday, December 4, 2014 11:23 AM
To: Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt
CC: Watts, John (Feinstein) (John_Watts@feinstein.senate.gov); Nelson, Damon; Lombardi, Kyle
Subject: FW: HR 5781

Tom and David,

Are there any intended or unintended negative impacts associated with this proposed change from the Exchangers?

-----Original Message-----

From: Berliner, Thomas M. [<mailto:TMBerliner@duanemorris.com>]
Sent: Thursday, December 04, 2014 12:59 PM
To: Watts, John (Feinstein); Kyle Lombardi
Cc: Williams Nancy E.; Mr. Chedester Steve
Subject: HR 5781

Dear John and Kyle,

Section 102 of the bill contains a misstatement. Section 102 (A) as written would make the United States obligation to make a substitute supply of water available to the Exchange contractors junior to the rights of the CVP and SWP. That is incorrect. The fix is simple. After the phrase "for operations of the state water project and" insert a "," and the words "subject to. "

In this way, the clause will read "subject to the priority of individuals or entities, including those with Sacramento River settlement contracts, that have priority to the diversion and use of water over water rights held by the United States for operations of the central valley project and over rights held by the state for operations of the state water project and, subject to the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange contractors, the secretaries shall..."

Please confirm that this change will be made. Otherwise, as written the exchange contractors would be in strong opposition to this bill.

Thank you very much.

Tom Berliner
Duane Morris LLP

Sorry for any typos.

For more information about Duane Morris, please visit <http://www.DuaneMorris.com>

Confidentiality Notice: This electronic mail transmission is privileged and confidential and is intended only for the review of the party to whom it is addressed. If you have received this transmission in error, please immediately return it to the sender. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege.

From: Tom Birmingham

Sent: Thursday, December 4, 2014 11:37 AM

To: Weaver, Kiel

CC: David Bernhardt; Watts, John (Feinstein) (John_Watts@feinstein.senate.gov); Nelson, Damon; Lombardi, Kyle

Subject: Re: HR 5781

Westlands is okay with this change.

Sent from my iPad

> On Dec 4, 2014, at 10:22 AM, "Weaver, Kiel" <Kiel.Weaver@mail.house.gov> wrote:

>

> Tom and David,

>

> Are there any intended or unintended negative impacts associated with this proposed change from the Exchangers?

>

> -----Original Message-----

> From: Berliner, Thomas M. [<mailto:TMBerliner@duanemorris.com>]

> Sent: Thursday, December 04, 2014 12:59 PM

> To: Watts, John (Feinstein); Kyle Lombardi

> Cc: Williams Nancy E.; Mr. Chedester Steve

> Subject: HR 5781

>

> Dear John and Kyle,

>

> Section 102 of the bill contains a misstatement. Section 102 (A) as written would make the United States obligation to make a substitute supply of water available to the Exchange contractors junior to the rights of the CVP and SWP. That is incorrect. The fix is simple. After the phrase "for operations of the state water project and" insert a ", " and the words "subject to. "

> In this way, the clause will read "subject to the priority of individuals or entities, including those with Sacramento River settlement contracts, that have priority to the diversion and use of water over water rights held by the United States for operations of the central valley project and over rights held by the state for operations of the state water project and, subject to the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange contractors, the secretaries shall..."

> Please confirm that this change will be made. Otherwise, as written the exchange contractors would be in strong opposition to this bill. Thank you very much.

> Tom Berliner

> Duane Morris LLP

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> Sorry for any typos.

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> For more information about Duane Morris, please visit <http://www.DuaneMorris.com>

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> Confidentiality Notice: This electronic mail transmission is privileged and confidential and is intended only for the review of the party to whom it is addressed. If you have received this transmission in error, please immediately return it to the sender. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege.

>

From: Weaver, Kiel
Sent: Thursday, December 4, 2014 1:18 PM
To: Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt
Subject: FW: Napolitano and Huffman Arguments

FYI.....

From: Weaver, Kiel
Sent: Thursday, December 04, 2014 3:18 PM
To: Lombardi, Kyle; Nelson, Damon; Tudor, Chris; Eastman, Kevin; Berenter, Alexandra; Butler, Jessica
Cc: Wong, Bryson; Young, Todd
Subject: FW: Napolitano and Huffman Arguments

We need to do a point/counterpoint on this tomorrow as we are planning for floor action on Monday. Any takers on who can start the document that we can use on the floor?

From: Wong, Bryson
Sent: Thursday, December 04, 2014 1:47 PM
To: Weaver, Kiel
Cc: Nelson, Damon
Subject: Napolitano and Huffman Arguments

From the Rules hearing yesterday.

Napolitano:

- Can't call this bill bi-partisan just because you have one Senator involved
- Introduced without a hearing, markup or any input from Southern California
- Received no input from the water agencies on this bill. Don't know how it will impact them, don't know the impacts of the bill on tribes, senior water rights holders, etc.
- Says she's heard (can't confirm) that this bill is being drafted by one of the largest conglomerate of farms (didn't say who)
- Focuses on Central CA more than Southern CA. This bill will increase flows to junior rights holders thus taking away from others.
- Theme: The bill needs to go by the regular process on a bipartisan basis for all of CA

Huffman:

- It is not the ESA that is preventing the State and Federal systems from pumping more but rather the permit and salinity level requirements
- This bill would not allow for more pumping, says the pumps are already pumping at maximum levels
- The bill hasn't had a hearing or been marked up by the committee and would hurt Northern CA fisheries, tribal interests, undermine State law, deprives water managers of the flexibility they need
- Would micro-manage the Water Systems of CA
- Haven't received input from Federal and State water agencies who have the responsibility of clean water and fisheries management. Haven't received input from locally managed water agencies, fishing industry interests, tribes or communities that would be impacted by the bill
- The bill is not bipartisan. Boxer does not see this bill as being a bipartisan bill. Need to have regular order for this bill and that is why Feinstein ended negotiations
- Stakeholders, public agencies and others expressed significant concerns with the bill

Questions he says he needs answered if we were to move forward with this bill:

1. Does the bill allow the State Water Board to issue new orders, including curtailment orders, should they be necessary in a 4th year of a drought? Talks about existing law but not what would happen in a 4th year of drought. Bill hardwires water allocation to a specific set of water users
 2. Bill requires federal government to provide maximum quantity of water supplies possible to CVP contractors. Does this bill allow the federal government to do other things that it believes is necessary to administer the CVP such as filling reservoirs to maintain storage levels they want, or if there are needs for public health, that flexibility doesn't appear to be there in this bill
 3. Does this bill put additional pressure on Trinity water supplies? Does this bill impact them in a negative way?
 4. Does it protect tribal trust obligations in those watersheds? "Tribe" or "Tribal Trust" is nowhere in the bill
 5. Will Title II undermine State water rights and the federal state coordinated operating agreement? There's language in this bill that says it will violate State environmental law (State ESA)
 - a. Misstatements in this bill: Statements that seem to suggest that exchange contractors and settlement contractors have the highest allocation priority for all CVP water, says that is not federal water contract law and yet that appears to be codified as new law in this bill
 6. Too many concerns, technical flaws with this bill in addition to the deeply flawed process
- Says there are salmon populations on the verge of extinction, even though this bill is short term it will do great harm to the fisheries and the communities that depend on the population.
 - Says there is monetary things we can do to help the SJV

Bryson Wong

Subcommittee on Public Lands and Environmental Regulation

Natural Resources Committee

U.S. House of Representatives

1017 Longworth House Office Building

Washington, DC 20515

Phone: (202)226-7736



From: Weaver, Kiel
Sent: Thursday, December 4, 2014 5:53 PM
To: 'tbirmingham@westlandswater.org'; 'dbernhardt@bhfs.com'; Nelson, Damon
Subject: Fw: Hoopa Valley Tribe proposed text for drought bill, HR 5781
Attachments: HVT Markup HR5781 120214.docx

Fyi....

From: Eastman, Kevin
Sent: Thursday, December 04, 2014 07:42 PM
To: Weaver, Kiel
Subject: Fw: Hoopa Valley Tribe proposed text for drought bill, HR 5781

This might be a good primer on Huffman's tribal gripe.

Kevin Eastman
Rep. Doug LaMalfa
(202) [REDACTED] mobile

From: JMembrino@HallEstill.com [mailto:JMembrino@HallEstill.com]
Sent: Thursday, December 04, 2014 05:51 PM
To: Eastman, Kevin
Subject: Hoopa Valley Tribe proposed text for drought bill, HR 5781

Council Member Ryan Jackson, Self-Governance Coordinator Danny Jordan and I appreciated the time Cong. LaMalfa gave to meet with us yesterday. As discussed we are concerned that as Congress works to resolve California water issues the solution not come at the expense of existing CVP law that protects the water supplies in the Trinity/Klamath basin. Below and attached is a markup of the new drought bill that we believe addresses the issue we raised. We are circulating this to other offices in the California delegation. We understand that H.R. 5781 is under a closed rule but also recognize that there may be opportunities for amendment before Congress adjourns. We request that you support the proposed change in the event there is an opportunity to do so.

22 SEC. 102. EMERGENCY PROJECTS.

23 (a) IN GENERAL.—Subject to the priority of individ-

24 uals or entities, including those with Sacramento River

25 Settlement Contracts, that have priority to the diversion

2 States for operations of the Central Valley Project and
3 over rights held by the State for operations of the State
4 Water Project and the United States obligation to make
5 a substitute supply of water available to the San Joaquin
6 River Exchange Contractors, and subject to the diversion
limits, priorities, and Klamath basin uses established in Section 2
of Pub. L. 84-386, 69 Stat. 719 (August 12, 1955) and section
3406(b)(23) of Pub. L. 102-575, 106 Stat. 4720 (October 30, 1992).

the Secretaries shall direct

7 the operations of the Central Valley Project and allow the
8 State Water Project to provide the maximum quantity of
9 water supplies possible to Central Valley Project agricul-
10 tural, municipal and industrial, and refuge service and re-
11 payment contractors, and State Water Project contrac-
12 tors, by approving, consistent with applicable laws (includ-
13 ing regulations)—

14 (1) any project or operations to provide addi-
15 tional water supplies if there is any possible way
16 whatsoever that the Secretaries can do so unless the
17 project or operations constitute a highly inefficient
18 way of providing additional water supplies; and

19 (2) any projects or operations as quickly as pos-

20 sible based on available information to address the

21 emergency conditions.

22 (b) MANDATE.—In carrying out subsection (a), the

23 ...

22 SEC. 102. EMERGENCY PROJECTS.

23 (a) IN GENERAL.—Subject to the priority of individ-
24 uals or entities, including those with Sacramento River
25 Settlement Contracts, that have priority to the diversion

4

1 and use of water over water rights held by the United
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5 a substitute supply of water available to the San Joaquin
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limits, priorities, and Klamath basin uses established in Section 2
of Pub. L. 84-386, 69 Stat. 719 (August 12, 1955) and section
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13 ing regulations)—

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15 tional water supplies if there is any possible way
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17 project or operations constitute a highly inefficient
18 way of providing additional water supplies; and
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20 sible based on available information to address the
21 emergency conditions.

22 (b) MANDATE.—In carrying out subsection (a), the
23 ...

Hoop Valley Tribe Mark-up of H.R. 5781 IH

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kfm:5/3/19

From: Weaver, Kiel

Sent: Friday, December 5, 2014 8:41 AM

To: David Bernhardt; Birmingham, Thomas (tbirmingham@westlandswater.org)

Subject: FW: California Water....this gift that keeps on giving. Need you to make a few small edits.....Thanks

Attachments: LMS_121_xml.pdf

From: Daly, Lisa

Sent: Friday, December 05, 2014 10:41 AM

To: Weaver, Kiel

Subject: RE: California Water....this gift that keeps on giving. Need you to make a few small edits.....Thanks

From: Weaver, Kiel

Sent: Friday, December 05, 2014 10:23 AM

To: Daly, Lisa

Subject: California Water....this gift that keeps on giving. Need you to make a few small edits.....Thanks

Lisa,

It's me again...

I need you to make the following technical edits asap to the California Emergency Drought Relief Title (dated 12/14/14; 12:28pm):

- 1) Page 3, line 4, after the word "and" insert ", subject to" . So it should now read "Water Project and, subject to the United States obligation to make....."
- 2) Page 5, line 10, after "cfs" insert "described in (b)"
- 3) Page 14, line 18, delete "01" and delete the "," after "02"
- 4) Page 15, line 1, delete "to section _03(d)(1)" and replace with "to Section 103 (d)(1)(A)(i) and to Section (d)(1)(A)(ii) of Public Law 108-361."
- 5) Page 24, line 13 replace "101" with "102"

*Kiel Weaver
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1 **TITLE _____—CALIFORNIA**
2 **EMERGENCY DROUGHT RELIEF**

3 **SEC. 01. SHORT TITLE.**

4 This title may be cited as the “California Emergency
5 Drought Relief Act of 2014”.

6 **Subtitle A—California Emergency**
7 **Drought Relief**

8 **SEC. 01. DEFINITIONS.**

9 In this subtitle:

10 (1) CENTRAL VALLEY PROJECT.—The term
11 “Central Valley Project” has the meaning given the
12 term in section 3403 of the Central Valley Project
13 Improvement Act (106 Stat. 4707).

14 (2) DELTA.—The term “Delta” means the Sac-
15 ramento-San Joaquin Delta and the Suisun Marsh,
16 as defined in sections 12220 and 29101 of the Cali-
17 fornia Public Resources Code.

18 (3) NEGATIVE IMPACT ON THE LONG-TERM
19 SURVIVAL.—The term “negative impact on the long-
20 term survival” means to reduce appreciably the like-
21 lihood of both the survival and recovery of a listed
22 species in the wild by reducing the reproduction,
23 numbers, or distribution of that species.

1 (4) SALMONID BIOLOGICAL OPINION.—The
2 term “salmonid biological opinion” means the bio-
3 logical opinion issued by the National Marine Fish-
4 eries Service on June 4, 2009.

5 (5) SECRETARIES.—The term “Secretaries”
6 means—

7 (A) the Secretary of Commerce; and

8 (B) the Secretary of the Interior.

9 (6) SMELT BIOLOGICAL OPINION.—The term
10 “smelt biological opinion” means the biological opin-
11 ion on the Long-Term Operational Criteria and Plan
12 for coordination of the Central Valley Project and
13 State Water Project issued by the United States
14 Fish and Wildlife Service on December 15, 2008.

15 (7) STATE.—The term “State” means the State
16 of California.

17 (8) STATE WATER PROJECT.—The term “State
18 Water Project” means the water project described
19 by California Water Code section 11550 et seq. and
20 operated by the California Department of Water Re-
21 sources.

22 **SEC. 02. EMERGENCY PROJECTS.**

23 (a) IN GENERAL.—Subject to the priority of individ-
24 uals or entities, including those with Sacramento River
25 Settlement Contracts, that have priority to the diversion

1 and use of water over water rights held by the United
2 States for operations of the Central Valley Project and
3 over rights held by the State for operations of the State
4 Water Project and, subject to the United States obligation
5 to make a substitute supply of water available to the San
6 Joaquin River Exchange Contractors, the Secretaries shall
7 direct the operations of the Central Valley Project and
8 allow the State Water Project to provide the maximum
9 quantity of water supplies possible to Central Valley
10 Project agricultural, municipal and industrial, and refuge
11 service and repayment contractors, and State Water
12 Project contractors, by approving, consistent with applica-
13 ble laws (including regulations)—

14 (1) any project or operations to provide addi-
15 tional water supplies if there is any possible way
16 whatsoever that the Secretaries can do so unless the
17 project or operations constitute a highly inefficient
18 way of providing additional water supplies; and

19 (2) any projects or operations as quickly as pos-
20 sible based on available information to address the
21 emergency conditions.

22 (b) MANDATE.—In carrying out subsection (a), the
23 applicable Secretary shall—

24 (1) authorize and implement actions to ensure
25 that the Delta Cross Channel Gates remain open to

1 the maximum extent practicable using findings from
2 the United States Geological Survey on diurnal be-
3 havior of juvenile salmonids, timed to maximize the
4 peak flood tide period and provide water supply and
5 water quality benefits, consistent with operational
6 criteria and monitoring set forth in the California
7 State Water Resources Control Board's Order Ap-
8 proving a Temporary Urgency Change in License
9 and Permit Terms in Response to Drought Condi-
10 tions, effective January 31, 2014, or a successor
11 order;

12 (2)(A) implement turbidity control strategies
13 that allow for increased water deliveries for the Cen-
14 tral Valley Project and State Water Project while
15 avoiding a negative impact on the long-term survival
16 delta smelt (*Hypomesus transpacificus*) due to en-
17 trainment at Central Valley Project and State Water
18 Project pumping plants;

19 (B) operating within the ranges provided for in
20 the smelt biological opinion to minimize water supply
21 reductions for the Central Valley Project and the
22 State Water Project, manage reverse flow in Old
23 and Middle Rivers at 5,000 cubic feet per second
24 (cfs) unless current scientific data indicate a less
25 negative Old and Middle River flow is necessary to

1 avoid a negative impact on the long-term survival of
2 the listed species; and

3 (C) show in writing that any determination to
4 manage OMR reverse flow at rates less negative
5 than 5000 cubic feet per second is necessary to
6 avoid a significant negative impact on the long-term
7 survival of the Delta smelt, including an explanation
8 of the data examined and the connection between
9 those data and the choice made prior to reducing
10 pumping to a rate less negative than 5000 cfs de-
11 scribed in subparagraph (B);

12 (3) adopt a 1:1 inflow to export ratio for the in-
13 crement of increased flow of the San Joaquin River,
14 as measured as a 3-day running average at Vernalis
15 during the period from April 1 through May 31, re-
16 sulting from voluntary sale, transfers, or exchanges
17 of water from agencies with rights to divert water
18 from the San Joaquin River or its tributaries on the
19 condition that a proposed sale, transfer, or exchange
20 under this paragraph may only proceed if the Sec-
21 retary of the Interior determines that the environ-
22 mental effects of the proposed sale, transfer, or ex-
23 change are consistent with effects permissible under
24 applicable law (including regulations), and provided
25 that Delta conditions are suitable to allow movement

1 of the acquired, transferred, or exchanged water
2 through the Delta consistent with the Central Valley
3 Project's and the State Water Project's permitted
4 water rights;

5 (4) issue all necessary permit decisions under
6 the authority of the Secretaries within 30 days of re-
7 ceiving a completed application by the State to place
8 and use temporary barriers or operable gates in
9 Delta channels to improve water quantity and qual-
10 ity for Central Valley Project and State Water
11 Project contractors and other water users, which
12 barriers or gates should provide benefits for species
13 protection and in-Delta water user water quality and
14 shall be designed such that formal consultations
15 under section 7 of the Endangered Species Act of
16 1973 (16 U.S.C. 1536) would not be necessary;

17 (5)(A) complete all requirements under the Na-
18 tional Environmental Policy Act of 1969 (42 U.S.C.
19 4321 et seq.) and the Endangered Species Act of
20 1973 (16 U.S.C. 1531 et seq.) necessary to make
21 final permit decisions on water transfer requests as-
22 sociated with voluntarily fallowing nonpermanent
23 crops in the State, within 30 days of receiving such
24 a request; and

1 (B) allow any water transfer request associated
2 with fallowing to maximize the quantity of water
3 supplies available for nonhabitat uses as long as the
4 fallowing and associated water transfer are in com-
5 pliance with applicable Federal laws (including regu-
6 lations);

7 (6) allow any North of Delta agricultural water
8 service contractor with unused Central Valley
9 Project water to take delivery of such unused water
10 through April 15, of the contract year immediately
11 following the contract year in which such water was
12 allocated, if—

13 (A) the contractor requests the extension;
14 and

15 (B) the requesting contractor certifies
16 that, without the extension, the contractor
17 would have insufficient supplies to adequately
18 meet water delivery obligations;

19 (7) implement instream and offsite projects in
20 the Delta and upstream in the Sacramento River
21 and San Joaquin basins, in coordination with the
22 California Department of Water Resources and the
23 California Department of Fish and Wildlife, that
24 offset the effects on species listed as threatened or
25 endangered under the Endangered Species Act of

1 1973 (16 U.S.C. 1531 et seq.) due to actions taken
2 under this title.

3 (c) OTHER AGENCIES.—To the extent that a Federal
4 agency other than agencies headed by the Secretaries has
5 a role in approving projects described in subsections (a)
6 and (b), the provisions of this section shall apply to those
7 Federal agencies.

8 (d) ACCELERATED PROJECT DECISION AND ELE-
9 VATION.—

10 (1) IN GENERAL.—Upon the request of the
11 State, the heads of Federal agencies shall use the
12 expedited procedures under this subsection to make
13 final decisions relating to a Federal project or oper-
14 ation to provide additional water supplies or address
15 emergency drought conditions pursuant to sub-
16 sections (a) and (b).

17 (2) REQUEST FOR RESOLUTION.—

18 (A) IN GENERAL.—Upon the request of
19 the State, the head of an agency referred to in
20 subsection (a), or the head of another Federal
21 agency responsible for carrying out a review of
22 a project, as applicable, the Secretary of the In-
23 terior shall convene a final project decision
24 meeting with the heads of all relevant Federal

1 agencies to decide whether to approve a project
2 to provide emergency water supplies.

3 (B) MEETING.—The Secretary of the Inte-
4 rior shall convene a meeting requested under
5 subparagraph (A) not later than 7 days after
6 receiving the meeting request.

7 (3) NOTIFICATION.—Upon receipt of a request
8 for a meeting under this subsection, the Secretary of
9 the Interior shall notify the heads of all relevant
10 Federal agencies of the request, including the
11 project to be reviewed and the date for the meeting.

12 (4) DECISION.—Not later than 10 days after
13 the date on which a meeting is requested under
14 paragraph (2), the head of the relevant Federal
15 agency shall issue a final decision on the project in
16 writing.

17 (5) MEETING CONVENED BY SECRETARY.—The
18 Secretary of the Interior may convene a final project
19 decision meeting under this subsection at any time,
20 at the discretion of the Secretary, regardless of
21 whether a meeting is requested under paragraph (2).

22 **SEC. 03. TEMPORARY OPERATIONAL FLEXIBILITY FOR**
23 **FIRST FEW STORMS OF THE WATER YEAR.**

24 (a) IN GENERAL.—Consistent with avoiding addi-
25 tional adverse affects upon listed fish species beyond the

1 range of those authorized under the Endangered Species
2 Act of 1973 (16 U.S.C. 1531 et seq.) and other environ-
3 mental protections under subsection (d), the Secretaries
4 shall authorize the Central Valley Project and the State
5 Water Project, combined, to operate at levels that result
6 in negative Old and Middle River flows up to 7500 cubic
7 feet per second (based on United States Geological Survey
8 gauges on Old and Middle Rivers) daily average for 28
9 cumulative days after October 1, as described in sub-
10 section (b).

11 (b) DAYS OF TEMPORARY OPERATIONAL FLEXI-
12 BILITY.—The temporary operational flexibility described
13 in subsection (a) shall be authorized on days that the Cali-
14 fornia Department of Water Resources determines the
15 daily average river flow of the Sacramento River is at, or
16 above, 17,000 cubic feet per second as measured at the
17 Sacramento River at Freeport gauge maintained by the
18 United States Geologic Survey.

19 (c) COMPLIANCE WITH ESA AUTHORIZATIONS.—In
20 carrying out this section, the Secretaries may continue to
21 impose any requirements under the smelt and salmonid
22 biological opinions during any period of temporary oper-
23 ational flexibility as they determine are reasonably nec-
24 essary to avoid additional adverse affects on a listed fish

1 species beyond the range of those authorized under the
2 Endangered Species Act of 1973.

3 (d) OTHER ENVIRONMENTAL PROTECTIONS.—

4 (1) The Secretaries' actions under this section
5 shall be consistent with applicable regulatory re-
6 quirements under state law, including State Water
7 Resources Control Board Decision 1641, as it may
8 be implemented in any given year.

9 (2) During the first flush of sediment out of the
10 Delta in each water year, and provided that such de-
11 termination is based upon objective evidence, OMR
12 flow may be managed at rates less negative than
13 5000 cubic feet per second for a minimum dura-
14 tion to avoid movement of adult Delta smelt
15 (*Hypomesus transpacificus*) to areas in the southern
16 Delta that would be likely to increase entrainment at
17 Central Valley Project and State Water Project
18 pumping plants.

19 (3) This section shall not affect the application
20 of the salmonid biological opinion from April 1 to
21 May 31, unless the Secretary of Commerce finds
22 that some or all of such applicable requirements may
23 be adjusted during this time period to provide emer-
24 gency water supply relief without resulting in addi-
25 tional adverse effects beyond those authorized under

1 the Endangered Species Act of 1973. In addition to
2 any other actions to benefit water supply, the Sec-
3 retary and the Secretary of Commerce shall consider
4 allowing through-Delta water transfers to occur dur-
5 ing this period.

6 (4) During operations under this section, the
7 Secretary of the Interior, in coordination with the
8 Fish and Wildlife Service, National Marine Fisheries
9 Service, and California Department of Fish and
10 Wildlife, shall undertake a monitoring program and
11 other data gathering to ensure incidental take levels
12 are not exceeded, and to identify potential negative
13 impacts and actions, if any, necessary to mitigate
14 impacts of the temporary operational flexibility to
15 species listed under the Endangered Species Act of
16 1973.

17 (e) TECHNICAL ADJUSTMENTS TO TARGET PE-
18 RIOD.—If, before temporary operational flexibility has
19 been implemented on 28 cumulative days, the Secretaries
20 operate the Central Valley Project and the State Water
21 Project combined at levels that result in Old and Middle
22 River flows less negative than 7500 cubic feet per sec-
23 ond during days of temporary operational flexibility as de-
24 fined in subsection (b), the duration of such operation

1 shall not be counted toward the 28 cumulative days speci-
2 fied in subsection (a).

3 (f) EMERGENCY CONSULTATION; EFFECT ON RUN-
4 NING AVERAGES.—

5 (1) If necessary to implement the provisions of
6 this section, the Secretary of the Interior shall use
7 the emergency consultation procedures under the
8 Endangered Species Act of 1973 and its imple-
9 menting regulation at section 402.05, title 50, Code
10 of Federal Regulations, to temporarily adjust the op-
11 erating criteria under the biological opinions, solely
12 for the 28 cumulative days of temporary operational
13 flexibility—

14 (A) no more than necessary to achieve the
15 purposes of this section consistent with the en-
16 vironmental protections in subsections (c) and
17 (d); and

18 (B) including, as appropriate, adjustments
19 to ensure that the actual flow rates during the
20 periods of temporary operational flexibility do
21 not count toward the 5-day and 14-day running
22 averages of tidally filtered daily Old and Middle
23 River flow requirements under the biological
24 opinions.

1 (2) At the conclusion of the 28 cumulative days
2 of temporary operational flexibility, the Secretary of
3 the Interior shall not reinitiate consultation on these
4 adjusted operations, and no mitigation shall be re-
5 quired, if the effects on listed fish species of these
6 operations under this section remain within the
7 range of those authorized under the Endangered
8 Species Act of 1973. If the Secretary of the Interior
9 reinitiates consultation, no mitigation measures shall
10 be required.

11 (g) LEVEL OF DETAIL REQUIRED FOR ANALYSIS.—
12 In articulating the determinations required under this sec-
13 tion, the Secretaries shall fully satisfy the requirements
14 herein but shall not be expected to provide a greater level
15 of supporting detail for the analysis than feasible to pro-
16 vide within the short time frame permitted for timely deci-
17 sion-making in response to changing conditions in the
18 Delta.

19 **SEC. 04. PROGRESS REPORT.**

20 Ninety days after the date of the enactment of this
21 Act and every 90 days thereafter, the Secretaries shall
22 provide a progress report describing the implementation
23 of sections 02 and 03 to the Committee on Natural
24 Resources in the House of Representatives and the Com-
25 mittee on Energy and Natural Resources in the Senate.

1 **SEC. 05. STATUS OF SURFACE STORAGE STUDIES.**

2 One year after the date of the enactment of this Act,
3 the Secretary of the Interior shall provide a progress re-
4 port on the status of feasibility studies undertaken pursu-
5 ant to clauses (i) and (ii) of section 103(d)(1)(A) of the
6 Water Supply, Reliability, and Environmental Improve-
7 ment Act (Public Law 108-361) to the Committee on Nat-
8 ural Resources in the House of Representatives and the
9 Committee on Energy and Natural Resources in the Sen-
10 ate. The report shall include timelines for study comple-
11 tion, draft environmental impact statements, final environ-
12 mental impact statements, and Records of Decision.

13 **Subtitle B—Protection of Third-**
14 **Party Water Rights**

15 **SEC. 01. OFFSET FOR STATE WATER PROJECT.**

16 (a) IMPLEMENTATION IMPACTS.—The Secretary of
17 the Interior shall confer with the California Department
18 of Fish and Wildlife in connection with the implementa-
19 tion of this title on potential impacts to any consistency
20 determination for operations of the State Water Project
21 issued pursuant to California Fish and Game Code section
22 2080.1.

23 (b) ADDITIONAL YIELD.—If, as a result of the appli-
24 cation of this title, the California Department of Fish and
25 Wildlife—

1 (1) revokes the consistency determinations pur-
2 suant to California Fish and Game Code section
3 2080.1 that are applicable to the State Water
4 Project;

5 (2) amends or issues one or more new consist-
6 ency determinations pursuant to California Fish and
7 Game Code section 2080.1 in a manner that directly
8 or indirectly results in reduced water supply to the
9 State Water Project as compared with the water
10 supply available under the smelt biological opinion
11 and the salmonid biological opinion; or

12 (3) requires take authorization under section
13 2081 for operation of the State Water Project in a
14 manner that directly or indirectly results in reduced
15 water supply to the State Water Project as com-
16 pared with the water supply available under the
17 smelt biological opinion and the salmonid biological
18 opinion,

19 and as a consequence of the Department's action, Central
20 Valley Project yield is greater than it would have been ab-
21 sent the Department's actions, then that additional yield
22 shall be made available to the State Water Project for de-
23 livery to State Water Project contractors to offset losses
24 resulting from the Department's action.

1 (c) NOTIFICATION RELATED TO ENVIRONMENTAL
2 PROTECTIONS.—The Secretary of the Interior shall imme-
3 diately notify the Director of the California Department
4 of Fish and Wildlife in writing if the Secretary of the Inte-
5 rior determines that implementation of the smelt biological
6 opinion and the salmonid biological opinion consistent with
7 this title reduces environmental protections for any species
8 covered by the opinions.

9 **SEC. 02. AREA OF ORIGIN PROTECTIONS.**

10 (a) IN GENERAL.—The Secretary of the Interior is
11 directed, in the operation of the Central Valley Project,
12 to adhere to California’s water rights laws governing water
13 rights priorities and to honor water rights senior to those
14 held by the United States for operation of the Central Val-
15 ley Project, regardless of the source of priority, including
16 any appropriative water rights initiated prior to December
17 19, 1914, as well as water rights and other priorities per-
18 fected or to be perfected pursuant to California Water
19 Code Part 2 of Division 2. Article 1.7 (commencing with
20 section 1215 of chapter 1 of part 2 of division 2, sections
21 10505, 10505.5, 11128, 11460, 11461, 11462, and
22 11463, and sections 12200 to 12220, inclusive).

23 (b) DIVERSIONS.—Any action undertaken by the Sec-
24 retaries pursuant to both this title and section 7 of the
25 Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.)

1 that requires that diversions from the Sacramento River
2 or the San Joaquin River watersheds upstream of the
3 Delta be bypassed shall not be undertaken in a manner
4 that alters the water rights priorities established by Cali-
5 fornia law.

6 (c) ENDANGERED SPECIES ACT.—Nothing in this
7 subtitle alters the existing authorities provided to and obli-
8 gations placed upon the Federal Government under the
9 Endangered Species Act of 1973 (16 U.S.C. 1531, et
10 seq.), as amended.

11 (d) CONTRACTS.—With respect to individuals and en-
12 tities with water rights on the Sacramento River, the man-
13 dates of this section may be met, in whole or in part,
14 through a contract with the Secretary executed pursuant
15 to section 14 of Public Law 76–260, 53 Stat. 1187 (43
16 U.S.C. 389) that is in conformance with the Sacramento
17 River Settlement Contracts renewed by the Secretary in
18 2005.

19 **SEC. 03. NO REDIRECTED ADVERSE IMPACTS.**

20 (a) IN GENERAL.—The Secretary of the Interior shall
21 ensure that, except as otherwise provided for in a water
22 service or repayment contract, actions taken in compliance
23 with legal obligations imposed pursuant to or as a result
24 of this title, including such actions under section 7 of the
25 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)

1 and other applicable Federal and State laws, shall not di-
2 rectly or indirectly—

3 (1) result in the involuntary reduction of water
4 supply or fiscal impacts to individuals or districts
5 who receive water from either the State Water
6 Project or the United States under water rights set-
7 tlement contracts, exchange contracts, water service
8 contracts, repayment contracts, or water supply con-
9 tracts; or

10 (2) cause redirected adverse water supply or fis-
11 cal impacts to those within the Sacramento River
12 watershed, the San Joaquin River watershed or the
13 State Water Project service area.

14 (b) COSTS.—To the extent that costs are incurred
15 solely pursuant to or as a result of this title and would
16 not otherwise have been incurred by any entity or public
17 or local agency or subdivision of the State of California,
18 such costs shall not be borne by any such entity, agency,
19 or subdivision of the State of California, unless such costs
20 are incurred on a voluntary basis.

21 (c) RIGHTS AND OBLIGATIONS NOT MODIFIED OR
22 AMENDED.—Nothing in this title shall modify or amend
23 the rights and obligations of the parties to any existing—

24 (1) water service, repayment, settlement, pur-
25 chase, or exchange contract with the United States,

1 including the obligation to satisfy exchange contracts
2 and settlement contracts prior to the allocation of
3 any other Central Valley Project water; or

4 (2) State Water Project water supply or settle-
5 ment contract with the State.

6 **SEC. 04. ALLOCATIONS FOR SACRAMENTO VALLEY CON-**
7 **TRACTORS.**

8 (a) ALLOCATIONS.—

9 (1) IN GENERAL.—Subject to paragraph (2)
10 and subsection (b), the Secretary of the Interior is
11 directed, in the operation of the Central Valley
12 Project, to allocate water provided for irrigation pur-
13 poses to existing Central Valley Project agricultural
14 water service contractors within the Sacramento
15 River Watershed in compliance with the following:

16 (A) Not less than 100 percent of their con-
17 tract quantities in a “Wet” year.

18 (B) Not less than 100 percent of their con-
19 tract quantities in an “Above Normal” year.

20 (C) Not less than 100 percent of their con-
21 tract quantities in a “Below Normal” year that
22 is preceded by an “Above Normal” or a “Wet”
23 year.

24 (D) Not less than 50 percent of their con-
25 tract quantities in a “Dry” year that is pre-

1 ceded by a “Below Normal,” an “Above Nor-
2 mal,” or a “Wet” year.

3 (E) In all other years not identified herein,
4 the allocation percentage for existing Central
5 Valley Project agricultural water service con-
6 tractors within the Sacramento River Water-
7 shed shall not be less than twice the allocation
8 percentage to south-of-Delta Central Valley
9 Project agricultural water service contractors,
10 up to 100 percent; provided, that nothing here-
11 in shall preclude an allocation to existing Cen-
12 tral Valley Project agricultural water service
13 contractors within the Sacramento River Water-
14 shed that is greater than twice the allocation
15 percentage to South-of-Delta Central Valley
16 Project agricultural water service contractors.

17 (2) CONDITIONS.—The Secretary’s actions
18 under paragraph (a) shall be subject to—

19 (A) the priority of individuals or entities
20 with Sacramento River water rights, including
21 those with Sacramento River Settlement Con-
22 tracts, that have priority to the diversion and
23 use of Sacramento River water over water
24 rights held by the United States for operations
25 of the Central Valley Project;

1 (B) the United States obligation to make
2 a substitute supply of water available to the
3 San Joaquin River Exchange Contractors; and

4 (C) the Secretary's obligation to make
5 water available to managed wetlands pursuant
6 to section 3406(d) of the Central Valley Project
7 Improvement Act (Public Law 102–575).

8 (b) PROTECTION OF MUNICIPAL AND INDUSTRIAL
9 SUPPLIES.—Nothing in subsection (a) shall be deemed
10 to—

11 (1) modify any provision of a water service con-
12 tract that addresses municipal and industrial water
13 shortage policies of the Secretary;

14 (2) affect or limit the authority of the Secretary
15 to adopt or modify municipal and industrial water
16 shortage policies;

17 (3) affect or limit the authority of the Secretary
18 to implement municipal and industrial water short-
19 age policies; or

20 (4) affect allocations to Central Valley Project
21 municipal and industrial contractors pursuant to
22 such policies.

23 Neither subsection (a) nor the Secretary's implementation
24 of subsection (a) shall constrain, govern or affect, directly
25 or indirectly, the operations of the Central Valley Project's

1 American River Division or any deliveries from that Divi-
2 sion, its units or its facilities.

3 (c) NO EFFECT ON ALLOCATIONS.—This section
4 shall not—

5 (1) affect the allocation of water to Friant Divi-
6 sion contractors; or

7 (2) result in the involuntary reduction in con-
8 tract water allocations to individuals or entities with
9 contracts to receive water from the Friant Division.

10 (d) PROGRAM FOR WATER RESCHEDULING.—The
11 Secretary of the Interior shall develop and implement a
12 program, not later than one year after the date of the en-
13 actment of this Act, to provide for the opportunity for ex-
14 isting Central Valley Project agricultural water service
15 contractors within the Sacramento River Watershed to re-
16 schedule water, provided for under their Central Valley
17 Project water service contracts, from one year to the next.

18 (e) DEFINITIONS.—In this section:

19 (1) The term “existing Central Valley Project
20 agricultural water service contractors within the
21 Sacramento River Watershed” means water service
22 contractors within the Shasta, Trinity, and Sac-
23 ramento River Divisions of the Central Valley
24 Project, that have a water service contract in effect,

1 on the date of the enactment of this section, that
2 provides water for irrigation.

3 (2) The year type terms used in subsection (a)
4 have the meaning given those year types in the Sac-
5 ramento Valley Water Year Type (40–30–30) Index.

6 **Subtitle C—Miscellaneous**
7 **Provisions**

8 **SEC. 01. EFFECT ON EXISTING OBLIGATIONS.**

9 (a) IN GENERAL.—Nothing in this title preempts or
10 modifies any existing obligation of the United States
11 under Federal reclamation law to operate the Central Val-
12 ley Project in conformity with State law, including estab-
13 lished water rights priorities.

14 (b) OBLIGATIONS UNDER CENTRAL VALLEY
15 PROJECT IMPROVEMENT ACT.—Nothing in this title af-
16 fects or modifies any existing obligation under the Central
17 Valley Project Improvement Act (title XXXIV of Public
18 Law 102-575).

19 **SEC. 02. TERMINATION OF AUTHORITIES.**

20 This title shall expire on September 30, 2016, or the
21 date on which the Governor of the State suspends the
22 state of drought emergency declaration, whichever is later.

From: Weaver, Kiel
Sent: Friday, December 5, 2014 8:57 AM
To: David Bernhardt; Birmingham, Thomas (tbirmingham@westlandswater.org)
Subject: FW: A few logistics for Monday -- need you to read and respond this morning.
Attachments: H.R. 5781 Legislative Summary.pdf; HR 5781 DC.pdf

Do edits needs to be made to these?

From: Butler, Jessica
Sent: Friday, December 05, 2014 10:17 AM
To: Weaver, Kiel; Lombardi, Kyle; Nelson, Damon; Eastman, Kevin; Tudor, Chris; Larrabee, Jason
Cc: Berenter, Alexandra; Loden, Kathy; Pittman, Lisa; Young, Todd; Griffiths (Strait), Jill; Vetter, Anna; Eslick, Tal
Subject: RE: A few logistics for Monday -- need you to read and respond this morning.

I've attached our DC and summary.

Jessica

Jessica Butler
Legislative Director
Rep. David G. Valadao (CA-21)
1004 Longworth House Office Building
Washington, DC 20024
202-225-4695
Jessica.butler@mail.house.gov



From: Weaver, Kiel
Sent: Friday, December 05, 2014 10:12 AM
To: Lombardi, Kyle; Nelson, Damon; Eastman, Kevin; Tudor, Chris; Larrabee, Jason; Butler, Jessica
Cc: Berenter, Alexandra; Loden, Kathy; Pittman, Lisa; Young, Todd; Griffiths (Strait), Jill
Subject: A few logistics for Monday -- need you to read and respond this morning.

All,

We are still planning to go forward for bill consideration on Monday around 2pm.

- 1) TIME. There will be one hour of debate, equally divided. Chairman Hastings will manage our time and likely use about 5-7 minutes altogether. **So, what I need from you this morning is how much time your boss wants for the remaining 23 minutes.**
- 2) POSTERS. Damon, do you still have some of those posters we used for H.R. 3964? We could use them for the floor and I could use them for the RSC and Whip briefings. **Does anyone have any updated photos of food lines or satellite photos of fallowed lands??**
- 3) POINT/COUNTER-POINT. David Bernhardt is working on some of this. Any help on answering what I sent you all yesterday would be great.

- 4) DEAR COLLEAGUES. I have no doubt that the other side will make this bill out to be the Apocalypse in DCL's. I strongly suggest your offices send something out later today or Monday.

Votes on final passage and an MTR will likely be Tuesday from my understanding.

*Kiel Weaver
Staff Director
House Water and Power Subcommittee
1522 Longworth HOB
Washington, DC 20515
kiel.weaver@mail.house.gov
202-225-8331*

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Legislative Summary

H.R. 5781; the California Emergency Drought Relief Act of 2014

Tuesday, December 2, 2014

Maximizes Delta Exports for Central and Southern California

- Sets Old and Middle River pumping rates at -5,000 cubic feet per second, while allowing Federal regulatory agencies the discretion to reduce pumping under certain instances
- This provision would help bring desperately needed water to Central and Southern California

Captures Storm Water Runoff Moving Through the Delta

- Authorizes Federal agencies to increase Old and Middle River pumping rates during the first few storms of the water year
- This provision would help bring desperately needed water to Central and Southern California

Promotes Federal Water Storage Projects in California

- Requires the U.S. Bureau of Reclamation to report to Congress in 1 year of enactment of this Act on the status of feasibility reports for various Federal water storage projects in California that have been pending for years
- Increased water storage in California would allow for the capture of more water during wet years to store for use during dry years

Protects Sacramento Valley Water Contractors

- Includes language on water allocations for Sacramento Valley water contractors

Holds Federal Regulatory Agencies Accountable

- Requires Federal regulatory agencies to report to Congress every 90 days following enactment of this Act on its implementation

Protects Federal, State, Northern, Central, and Southern California Water Contractors

- Includes provisions to protect State Water Project contractors, Area of Origin water rights holders, and preserves the existing water rights priority systems in California and Federal law
- Also, includes language that prevents any adverse redirected impacts to any water contractor in California resulting from implementation of this Act

Provides Immediate Emergency Relief

- Provisions in this bill expire on September 30, 2016, or when the gubernatorial drought declaration is rescinded, whichever occurs later



UNITED STATES
HOUSE OF REPRESENTATIVES

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEE ON AGRICULTURE,
RURAL DEVELOPMENT,
FOOD AND DRUG ADMINISTRATION

SUBCOMMITTEE ON INTERIOR
AND THE ENVIRONMENT

SUBCOMMITTEE ON MILITARY
CONSTRUCTION AND VETERANS AFFAIRS

PROVIDE DROUGHT RELIEF

Dear Colleagues,

I urge you to support H.R. 5781; the *California Emergency Drought Relief Act of 2014*, which will be considered on the Floor next week.

Since the construction of the federal Central Valley Project (CVP), California's water needs have grown dramatically while available supplies have hardly risen. This year, California's water challenges have been made exponentially worse by record low precipitation. Unfortunately, even in the face of record drought conditions, inflexible federal regulations continue to divert billions of gallons of water away from farmers and families and out into the ocean.

In an effort to provide immediate, short-term relief while protecting the State Water project and Northern California water rights I introduced H.R. 5781; the *California Emergency Drought Relief Act of 2014*.

The California Emergency Drought Relief Act would:

- Maximize Delta Exports for Central and Southern California
- Capture Storm Runoff Moving Through the Delta
- Promote Federal Water Storage Projects in California
- Hold Federal Regulatory Agencies Accountable
- Protect Federal, State, Northern, Central and Southern California Water Contractors
- Provide Immediate Emergency Relief

Your support of H.R. 5781; the *California Emergency Drought Relief Act of 2014*, is necessary to provide emergency relief to citizens in the California and address drought conditions made exponentially worse by federal regulation, save thousands of jobs and protect billions of dollars in economic activity.

Sincerely,

David G. Valadao

Member of Congress

From: Jason Peltier

Sent: Friday, December 5, 2014 1:30 PM

To: 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; 'Catherine Karen'; 'Dan Pope'; 'Darlene Knauft'; 'David Bernhardt'; 'Dennis Cardoza'; 'Denny Rehberg'; 'Doug Subers'; 'Ed Manning'; 'Erick Mullen'; 'Gayle Holman'; 'Jason Peltier'; 'Jim Watson'; 'Joe Findaro'; 'Mike Burns'; 'Sheila Greene'; 'Susan Ramos'; T Birmingham (tbirmingham@westlandswater.org)

Subject: Opo

Importance: High

From: env-trinity [mailto:env-trinity-bounces@velocipede.dcn.davis.ca.us] **On Behalf Of** Dan Bacher

Sent: Friday, December 05, 2014 12:23 PM

To: undisclosed-recipients

Subject: [env-trinity] Article Submission: House 'Drought Relief' Bill Would Eviscerate Environmental Protections

Importance: High



<http://www.dailykos.com/story/2014/12/04/1349404/-House-Drought-Relief-Bill-Eviscerates-Environmental-Protections>

<http://www.indybay.org/newsitems/2014/12/05/18765080.php>

House 'Drought Relief' Bill Would Eviscerate Environmental Protections

by Dan Bacher

On December 2, Congressman David G. Valadao (CA-21) introduced controversial water legislation in the U.S. House of Representatives purported to provide "short-term relief" from California's water crisis.

"I will not let this year end without exhausting every possible option to bring relief to the Central Valley," Valadao vowed.

However, environmental and fishing groups and Northern California Congress Members quickly responded to the measure, slamming the bill for being a "wish list" dictated by San Joaquin Valley corporate agribusiness interests "to the politicians they hold in thrall."

In response, Barbara Boxer late on Wednesday released a statement that "this measure could reignite the water wars by overriding critical state and federal protections for California," all but ensuring that the bill will be die until the Republican-dominated Senate and House take over next year.

There is no doubt that Valadao and his fellow San Joaquin Valley Congressmen will make the passage of this legislation a priority in 2015.

Valadao claims H.R. 5781, the California Emergency Drought Relief Act of 2014, "provides eighteen months of relief (two water years) while protecting the State Water Project and protecting Northern California water rights."

Rep. Valadao stated, "This well thought out, common sense legislation contains no controversial measures for either Party. Not only will this legislation provide a temporary eighteen month solution, it will also help ensure negotiations between the Senate and the House continue."

Original cosponsors of the legislation include Reps. David G. Valadao (CA-21), Kevin McCarthy (CA-23), Ken Calvert (CA-42), Jim Costa (CA-16), Doug LaMalfa (CA-01), Tom McClintock (CA-04), and Devin Nunes (CA-22).

Environmental groups took strong issue with Valadao's claim that the "legislation contains no controversial measures for either party," pointing out that it would eviscerate Endangered Species Act protections, overrule the Delta smelt biological opinions and increase pumping from the Delta. This would take place at a critical time when fisheries desperately need water flows to recover from the drought.

In a statement, the California Water Impact Network (C-WIN) said HR 5781 "purports to solve California's drought-induced water shortages," but "will do nothing of the sort."

"HR 5781 mandates water deliveries to all Central Valley Project and State Water Project

contractors – regardless of the water available in storage,” according to C-WIN “This assures ‘dead pools’ in our reservoirs if the drought continues, meaning there will be no water available when urban ratepayers and industry need it most for basic survival.”

The group also said the bill provides for a 30-day federal review of all projects and operations that “would provide additional water supplies.” This could ultimately result in the fast-track approval of ruinously expensive, environmentally destructive and ultimately inefficient schemes, including new dams.

Finally, C-WIN blasted the legislation for allowing for expedited water transfers, “putting the ecological stability of our North State rivers and the reserves of our aquifers at risk.”

“This bill will actually perpetuate our drought emergency by giving away all the water in storage to Big Ag,” said Tom Stokely, water policy analyst for the California Water Impact Network. “It will drain Trinity Lake, depleting the last cold water reserve available for Klamath and Trinity River salmon and steelhead. We’ll see fish kills that make the great die-off of 2002 look minor by comparison.”

“No matter how you cut it, this bill is an utter disaster. We’re calling on Dianne Feinstein and Barbara Boxer to oppose this legislation in the Senate. They need to step up and protect California’s water supplies, urban ratepayers, environment, family farms and fisheries,” Stokely concluded.

For more information about C-WIN, go to <http://www.c-win.org/>

Restore the Delta (RTD), opponents of Governor Jerry Brown’s Bay Delta Conservation Plan (BDGP) to build the salmon-killing peripheral tunnels, criticized Representative David Valadao for trying to push through a “drought relief” measure that would allow more water for Westlands’ and Kern Water Districts’ mega-growers in the midst of a severe drought.

“Congressman Valadao’s bill is more of the same from this Congress that is bent on circumventing state water rights and stopping state and federal agencies from determining and implementing safe water export levels for San Francisco Bay-Delta fisheries, Delta farms, and Delta communities,” said Barbara Barrigan-Parrilla, executive director of Restore the Delta.

“The sponsors of this legislation favor big industrial growers who have planted tens of thousands of acres of almonds and other permanent crops in the midst of the drought, and those who seek to profit from selling water to the detriment of Northern California rivers, groundwater supplies, and the Bay-Delta estuary,” added Barrigan-Parrilla.

“Members of Congress are manipulating the impacts of drought conditions to serve wealthy special interests. They’re framing the bill as non-controversial, and bipartisan, but it would smother Endangered Species Act protections, overrule the Delta smelt biological opinions, and increase pumping from the Delta, when fisheries need flows presently to recover from the drought,” she stated.

"These same Congressional Representatives never consider what will be the economic impacts on the Bay-Delta economy as water quality and fisheries continue to deteriorate from decades of over pumping the Delta. They continue to exclude the 4 million residents of the Delta region, even though their economic and environmental well-being is tied to the health of the region. We are tired of their ongoing political assault on our communities," concluded Barrigan-Parrilla.

The Northern California Congressional Delegation on December 3 issued a statement blasting the "flawed, discriminatory House Republican water bill."

(<http://mavensnotebook.com/2014/12/03/this-just-in-northern-california-delegation-statement-on-flawed-discriminatory-house-republican-water-bill-members-the-drought-does-not-stop-at-the-edge-of-congressional-districts/>)

Northern California Representatives Jared Huffman (D-02), George Miller (D-11) Mike Thompson (D-05), Doris Matsui (D-06), Jerry McNerney (D-09), John Garamendi (D-03), and Ami Bera (D-07) stated:

"With just a few days left in the legislative session, the House plans to pass yet another divisive, dishonest, and potentially devastating California water bill without any public input or legislative oversight. This is unconscionable, and just the latest chapter in Republicans' reckless approach to micromanaging the state's water during one of the worst droughts in our history.

"The idea that this bill is a 'compromise' is laughable. It is clear that this bill was thrown together without any input from anyone other than those who stand to benefit from its passage. This bill was not reviewed by the Natural Resources Committee, nor has it received input from federal agencies, the state, affected local water agencies, the fishing industry, tribes, or communities. Legislation this sweeping should be the subject of public hearings and input from all affected stakeholders.

"The bill makes it more difficult for state and federal agencies to make real-time water decisions, undermines state water rights priorities, misstates current law, and explicitly overrides the Endangered Species Act. These sweeping changes would place the west coast's environment, tribes, communities, and the fishing industry in harm's way in the next drought year.

"The drought does not stop at the edge of congressional districts, yet this bill insulates some parts of the state from the tough water decisions that will be made in the next year. We're all in this together, and Congress should not tie water managers' hands nor should we address drought conditions in some parts of the state at the expense of others."

You can watch Congressman Jared Huffman speaking on the Delta fisheries and northern California water supplies in the hearing on H.R. 5781 at: <http://bit.ly/1FRsaPL>

For more information, go to: <http://restorethedelta.org>

From: Weaver, Kiel
Sent: Friday, December 5, 2014 6:00 PM
To: 'tbirmingham@westlandswater.org'; 'dbernhardt@bhfs.com'
Subject: Fw: Sen. Merkeley/Klamath and California Water

Serious problem....

From: Weaver, Kiel
Sent: Friday, December 05, 2014 07:16 PM
To: Young, Todd; Nelson, Damon; Lombardi, Kyle; Eastman, Kevin; Tudor, Chris; Strader, Nick; Dixon, Kelly
Subject: Sen. Merkeley/Klamath and California Water

In an intersection of two things I knew would happen eventually over this six month odyssey, Senator Merkeley has inserted his wish to add his controversial Klamath Restoration and Dam Removal bill into the omnibus negotiations on the California water House GOP/Feinstein proposal. I found this out from Feinstein's office. Apparently, us accepting his Klamath bill, which has not been considered in the House, is the price for his support for adding the California provisions to the omnibus. As many of you know, the Klamath provision has many problems. Of course, this doesn't resolve the Boxer objection, either. Not sure what we get out of this.

From: DCardoza@foley.com

Sent: Sunday, December 7, 2014 5:34 PM

To: Rep. Jim Costa

CC: Dan Nelson; Ara Azhderian; David Longly Bernhardt; Joe Findaro; Scott Petersen; Denny Rehberg; Tom Birmingham

Subject: Re: Rain can't extinguish hot talk about water | The Modesto Bee

Hi Jim and Scott,

We need to work the Southern California Dems and Blue dogs as we discussed. Do you have a whip count yet from the list we made up last week?

Debate will begin at 2pm Monday. Do we know when the vote will take place?

Dennis

Congressman Dennis A. Cardoza

Foley & Lardner LLP

Suite 600

3000 K Street, NW<x-apple-data-detectors://0/0>

Washington, DC 20007-5109<x-apple-data-detectors://0/0>

Phone: 202.295-4015

Fax: 202.672.5399<tel:202.672.5399>

Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

Sent from my iPhone

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On Dec 7, 2014, at 6:17 PM, Tom Birmingham <tbirmingham@westlandswater.org<<mailto:tbirmingham@westlandswater.org>>>> wrote:

Good job!

<http://www.modbee.com/opinion/opn-columns-blogs/mike-dunbar/article4307320.html>

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From: Costa, Jim

Sent: Sunday, December 7, 2014 5:43 PM

To: DCardoza@foley.com

CC: Dan Nelson; Ara Azhderian; David Longly Bernhardt; Joe Findaro; Petersen, Scott; Denny Rehberg; Tom Birmingham

Subject: Re: Rain can't extinguish hot talk about water | The Modesto Bee

My understanding the vote is Tuesday. Started a whip count w/Scott & Staff., we are working Blue Dogs and other folks who are friends or just miff-off -- jim

Sent from my iPhone

> On Dec 7, 2014, at 5:34 PM, "DCardoza@foley.com" <DCardoza@foley.com> wrote:

>

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> Dennis

>

>

> Congressman Dennis A. Cardoza

> Foley & Lardner LLP

> Suite 600

> 3000 K Street, NW<x-apple-data-detectors://0/0>

> Washington, DC 20007-5109<x-apple-data-detectors://0/0>

> Phone: 202.295-4015

> Fax: 202.672.5399<tel:202.672.5399>

> Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

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From: DCardoza@foley.com

Sent: Sunday, December 7, 2014 5:50 PM

To: Costa, Jim

CC: Dan Nelson; Ara Azhderian; David Longly Bernhardt; Joe Findaro; Petersen, Scott; Denny Rehberg; Tom Birmingham

Subject: Re: Rain can't extinguish hot talk about water | The Modesto Bee

Very good. I will call or those I can help with. Dennis

Congressman Dennis A. Cardoza

Foley & Lardner LLP

Suite 600

3000 K Street, NW<x-apple-data-detectors://0/0>

Washington, DC 20007-5109<x-apple-data-detectors://0/0>

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Congressman Dennis A. Cardoza

Foley & Lardner LLP

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From: Butler, Jessica

Sent: Monday, December 8, 2014 9:06 AM

To: David L. Bernhardt (dbernhardt@bhfs.com); Tom Birmingham (tbirmingham@westlandswater.org)

Subject: Potential water questions

Good morning gentlemen,

In prep for floor debate today I ran across these from CRS, any way we could try and get a few of these answered before 2?

Questions Emerge

H.R. 5781 raises several potential questions and issues that are unique to the bill, and in some cases are similar to issues raised by S. 2198 and H.R. 3964. For example:

- How will the Secretary of the Interior implement the provisions in the bill to result in increased water supplies for users while remaining consistent with existing laws and regulations?
- What are the short- and long-term environmental effects of the bill, given the uncertainty of how long the state will be under a drought emergency declaration?
- What are the short- and long-term effects on water users, assuming no redirected adverse impacts or changes to state water law?
- How will the potential projects and operational changes, as well as mitigation expenses, be funded under this bill?
- What are the precedent-setting provisions in the bill for managing resources wh

Jessica

Jessica Butler

Legislative Director

Rep. David G. Valadao (CA-21)

1004 Longworth House Office Building

Washington, DC 20024

202-225-4695

jessica.butler@mail.house.gov



From: Butler, Jessica

Sent: Monday, December 8, 2014 10:22 AM

To: Tom Birmingham (tbirmingham@westlandswater.org); David L. Bernhardt (dbernhardt@bhfs.com)

Subject: latest water numbers

Where can I find the latest numbers for the amount of water that has been dumped into the ocean for fish etc?

Jessica

Jessica Butler

Legislative Director

Rep. David G. Valadao (CA-21)

1004 Longworth House Office Building

Washington, DC 20024

202-225-4695

Jessica.butler@mail.house.gov



From: Tom Birmingham
Sent: Monday, December 8, 2014 10:39 AM
To: Butler, Jessica
CC: David L. Bernhardt (dbernhardt@bhfs.com)
Subject: Re: Potential water questions

Sent from my iPad

On Dec 8, 2014, at 9:06 AM, "Butler, Jessica" <Jessica.Butler@mail.house.gov> wrote:

Good morning gentlemen,
In prep for floor debate today I ran across these from CRS, any way we could try and get a few of these answered before 2?

Questions Emerge

H.R. 5781 raises several potential questions and issues that are unique to the bill, and in some cases are similar to issues raised by S. 2198 and H.R. 3964. For example:

- How will the Secretary of the Interior implement the provisions in the bill to result in increased water supplies for users while remaining consistent with existing laws and regulations?

The existing biological opinions provide ranges for management of reverse flow in Old and Middle Rivers. The range during the period from December 1 - June 30 is -1250 to -5000 cubic feet per second, and these ranges are achieved by modifying rates of export pumping. The legislation provides that OMR reverse flow will be managed at the upper end of the range unless the agencies conclude, based on data, that it is necessary to reduce reverse flow in order to avoid a negative impact on the long-term survival of the species. The difference between operating at the upper end versus the low end of the range can mean more than 1MAF per for the Central Valley Project and the State Water Project. In addition, the legislation provides that for water purchased and used to augment flow in the San Joaquin River during the April - May period, the projects can pump that water at a 1:1 inflow/export ratio so long as environmental conditions permit. This year, the CVP and SWP contractors have already made arrangements to purchase 100,000 that will be released in April/Many, and compare to a 4:1 inflow/export ratio the projects will be as much as 75,000 acre-feet for the two projects. These increased volumes of flow also provide benefit to out-migrating salmon.

- What are the short- and long-term environmental effects of the bill, given the uncertainty of how long the state will be under a drought emergency declaration?

One of the short term environmental effects of this legislation will be to reduce groundwater overdraft in the San Joaquin Valley. Increased water supplies from the CVP and SWP will mean that farmers will have to rely less on groundwater to irrigate crops. To the extent that there is sufficient water to put back into production fields that have been fallowed, there will be improved air quality in the Valley. There should be no effect on

the fisheries, because the agencies maintain discretion to take actions within the biological opinions to protect species from long-term harm.

- What are the short- and long-term effects on water users, assuming no redirected adverse impacts or changes to state water law?

The bill is carefully crafted to ensure that there is neither short-term nor long-term harm to other water users. For public water agencies that receive water from the CVP and the SWP, there should be short-term water supply benefits. Given the temporary nature of this legislation, there are no foreseeable long-term effects.

- How will the potential projects and operational changes, as well as mitigation expenses, be funded under this bill?

The federal agencies have sufficient discretionary funding to enable them to pay for operational changes and mitigation. For every additional acre-foot of water delivered to CVP ag service contractors, there will be an additional \$9.99 paid to the CVPIA restoration fund.

- What are the precedent-setting provisions in the bill for managing resources wh

This is emergency legislation and should not be precedent setting.

Jessica

Jessica Butler
Legislative Director
Rep. David G. Valadao (CA-21)
1004 Longworth House Office Building
Washington, DC 20024
202-225-4695
Jessica.butler@mail.house.gov

<image001.jpg> <image002.png> <image003.jpg>

From: Butler, Jessica
Sent: Monday, December 8, 2014 11:24 AM
To: 'Tom Birmingham'
Subject: RE: Potential water questions

Thank you!! Saved the day again!

Jessica

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From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Monday, December 08, 2014 12:39 PM
To: Butler, Jessica
Cc: David L. Bernhardt (dbernhardt@bhfs.com)
Subject: Re: Potential water questions

Sent from my iPad

On Dec 8, 2014, at 9:06 AM, "Butler, Jessica" <Jessica.Butler@mail.house.gov> wrote:

Good morning gentlemen,
In prep for floor debate today I ran across these from CRS, any way we could try and get a few of these answered before 2?

Questions Emerge
H.R. 5781 raises several potential questions and issues that are unique to the bill, and in some cases are similar to issues raised by S. 2198 and H.R. 3964. For example:

- How will the Secretary of the Interior implement the provisions in the bill to result in increased water supplies for users while remaining consistent with existing laws and regulations?

The existing biological opinions provide ranges for management of reverse flow in Old and Middle Rivers. The range during the period from December 1 - June 30 is -1250 to -5000 cubic feet per second, and these ranges are achieved by modifying rates of export pumping. The legislation provides that OMR reverse flow will be managed at the upper end of the range unless the agencies conclude, based on data, that it is necessary to reduce

reverse flow in order to avoid a negative impact on the long-term survival of the species. The difference between operating at the upper end versus the low end of the range can mean more than 1MAF per for the Central Valley Project and the State Water Project. In addition, the legislation provides that for water purchased and used to augment flow in the San Joaquin River during the April - May period, the projects can pump that water at a 1:1 inflow/export ratio so long as environmental conditions permit. This year, the CVP and SWP contractors have already made arrangements to purchase 100,000 that will be released in April/Many, and compare to a 4:1 inflow/export ratio the projects will be as much as 75,000 acre-feet for the two projects. These increased volumes of flow also provide benefit to out-migrating salmon.

- What are the short- and long-term environmental effects of the bill, given the uncertainty of how long the state will be under a drought emergency declaration?

One of the short term environmental effects of this legislation will be to reduce groundwater overdraft in the San Joaquin Valley. Increased water supplies from the CVP and SWP will mean that farmers will have to rely less on groundwater to irrigate crops. To the extent that there is sufficient water to put back into production fields that have been fallowed, there will be improved air quality in the Valley. There should be no effect on the fisheries, because the agencies maintain discretion to take actions within the biological opinions to protect species from long-term harm.

- What are the short- and long-term effects on water users, assuming no redirected adverse impacts or changes to state water law?

The bill is carefully crafted to ensure that there is neither short-term nor long-term harm to other water users. For public water agencies that receive water from the CVP and the SWP, there should be short-term water supply benefits. Given the temporary nature of this legislation, there are no foreseeable long-term effects.

- How will the potential projects and operational changes, as well as mitigation expenses, be funded under this bill?

The federal agencies have sufficient discretionary funding to enable them to pay for operational changes and mitigation. For every additional acre-foot of water delivered to CVP ag service contractors, there will be an additional \$9.99 paid to the CVPIA restoration fund.

- What are the precedent-setting provisions in the bill for managing resources wh

This is emergency legislation and should not be precedent setting.

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From: Tom Birmingham
Sent: Monday, December 8, 2014 12:00 PM
To: Butler, Jessica
CC: David L. Bernhardt
Subject: Re: Potential water questions

Jessica,

One additional short-term environmental impact is improved water quality in the Central and South Delta. The legislation provides for keeping the cross-channel gates open. This will have a dramatic effect on water quality, to the good.

Tom

Sent from my iPad

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From: Jason Peltier

Sent: Tuesday, December 9, 2014 10:27 AM

To: T Birmingham (tbirmingham@westlandswater. org); Dennis Cardoza; Joe Findaro; David Bernhardt; Dan Nelson <Dan. Nelson@sldmwa. org>; Ara.azhderian@sldmwa.org

Subject: Merced Sun-Star / Don't treat Valley's people as if they are disposable

<http://www.mercedsunstar.com/>

Don't treat Valley's people as if they are disposable

BY JOSE ANTONIO RAMIREZ

12/07/2014 4:00 AM

12/08/2014 3:59 PM

-  Story
 - [Comments](#)
-

Agriculture is as important to the city of Livingston as technology is to the Silicon Valley. Our farming way of life has always been the backbone of the region; it provides a career ladder up for families starting at the lowest employment level and an opportunity for many to start their first humble family business.

As city manager of Livingston, I take great pride in the efforts our residents have made to recover from the recession and the housing crisis. But we cannot have a sustained recovery without a recovery in agriculture. Thousands of acres in our region have been left fallowed. Some of that has been the result of hard times suffered by local farmers due to the recession and other variables. But most of it is due to the hardships resulting from no relief, in the form of making water available for agriculture.

Unfortunately, despite all the attention paid to the drought, we still have no solution that will help the residents of Livingston. There have been several attempts by Congress to put together a bipartisan solution, and we have been given years of assurances that our desperate situation will be addressed. These assurances are not secondhand knowledge because I have heard everything firsthand.

Now we are less than a week away from the end of this Congress. There appears to be one last chance to provide relief to our region. We urge policymakers to remember us, and take action. We don't want

to be left stranded, like we were back in 2009. I was the city manager for the city of Firebaugh from 2003 to 2011 and I can attest to the human suffering.

Livingston is a town of 15,000. In terms of numbers, we're roughly the same size as many towns in Southern California. But when a mudslide hits, or a fire threatens homes, heaven and earth is moved as policymakers rush to secure emergency funds to assist. Don't we deserve the same consideration in the form of temporary emergency relief?

We're not disposable. Livingston is an ethnically diverse, residential, commercial and industrial center in Merced County and the Central Valley. It is strategically located along one of California's major freeway arteries and is just two hours from San Francisco, the Pacific Coast and the majestic Sierra Nevada. Many residents relocated to Livingston because they saw the opportunity to create a future for themselves and their families; over 56 percent are Latino. How is it possible that politics has prevailed over duty, and that the water crisis affecting our city and region has been ignored?

Even more perplexing is the willingness on the part of some elected officials to tolerate the economic impact of the drought in this region. Are we so unimportant that policymakers refuse to consider any change to environmental laws that might provide some relief to our region as we reflect on the human impact?

Apparently for some California leaders, the impact of the drought, especially for young people looking for jobs, does not rise to a level that requires a solution. Rather than participating in a solution, they simply condemn any proposal that is offered. Our representatives have fought hard for a solution, but their efforts have fallen victim to politics.

For years, we have heard platitudes and promises – but now we need follow-through on the commitments. The people of Livingston and the Central Valley need California elected officials to support drought relief legislation. There are seven days left to take action. Please use them to show your colleagues from other parts of the country that we do matter.

Please support drought relief!

Ramirez is city manager of Livingston

Read more here: <http://www.mercedsunstar.com/opinion/opn-columns-blogs/article4373978.html#storylink=cpy>

From: Jason Peltier

Sent: Wednesday, December 10, 2014 9:04 PM

To: sramos@westlandswater.org; James Watson; Craig Manson; Philip Williams; Sheila Greene; Dennis Cardoza; Denny Rehberg; Joe Findaro; David Bernhardt; Ed Manning; Carolyn Jensen; Gayle Holman; Mike Wade

Subject: Fwd: Operations Update

Begin forwarded message:

From: "Tom " <tboardman@apex.net>

Date: December 10, 2014 at 6:12:09 PM PST

To: <jaclyn.murray@mail.house.gov>, <mboccardo@dolphingroup.org>, <ahansen@delpuertowd.org>, "Allison Febbo" <AFebbo@swc.org>, "Ara Azhderian" <Ara.Azhderian@sldmwa.org>, "Bobby Pierce" <bobby.pierce@weststanislausid.org>, "Chris Hurd" <[REDACTED]>, "Chris White" <[REDACTED]>, <cjensen@ka-pow.com>, <ckao@valleywater.org>, "Dan Nelson" <dan.nelson@sldmwa.org>, <[REDACTED]>, "David Weisenberger" <dweisenberger@banta-carbona.org>, "Dee Dee D'Adamo" <[REDACTED]>, "Dennis Falaschi" <[REDACTED]>, <DMody@valleywater.org>, "Don Peracchi" <[REDACTED]>, "Erick Johnson" <ErickHJ@WaterAgency.com>, <ErickJohnson@WaterAgency.com>, "Frances Brewster" <FBrewster@valleywater.org>, "Frances Mizuno" <frances.mizuno@sldmwa.org>, "Gayle Holman" <gholman@westlandswater.org>, "Jason Dean" <[REDACTED]>, "Jason Peltier" <jpeltier@westlandswater.org>, "Jeff Cattaneo" <JCattaneo@sbcwd.com>, <jgutierrez@slwd.net>, "Jim Nickel" <jlnickel@nflc.net>, "Jon Rubin" <Jon.Rubin@sldmwa.org>, <kimberlyb@paramountfarming.com>, "Mark Rhodes" <mrhodes@westlandswater.org>, "Martin McIntyre" <[REDACTED]>, "Melissa P" <MelissaP@paramountfarming.com>, "Mike Gardner" <mgardner@gwdwater.org>, <mwade@farmwater.org>, "Peter Rietkerk" <prietkerk@pattersonid.org>, "Rick Gilmore" <r.gilmore@bbid.org>, <[REDACTED]>, "Seth Harris" <seth.harris@sldmwa.org>, "Shelly Abajian" <shelly_abajian@feinstein.senate.gov>, <sramos@westlandswater.org>, "Steve Chedester" <stevechedester@sjrecwa.net>, <tanderson@valleywater.org>, <terryerlewine@swc.org>, <[REDACTED]>

Subject: Operations Update

Reply-To: <tboardman@apex.net>

Hi All,

With the hydrology finally changing to a wet pattern, many have requested an update on Project operations. As such, this is to resume my weekly updates on Project operations. The intent of the updates is keep you informed on the current and near term operations, including any current or potential export constraint. Let me know if there is any additional information that you would like me to include.

- Delta inflows have increased from 9,300 cfs on Dec 1 to about 24,000 yesterday.
- Export increases were delayed until the last few days out of concerns for increased salinity in the interior delta caused by high tides and winds from the last storm.
- Banks pumping has been increasing over the past week and reached capacity yesterday (6680 cfs).

- Jones is now at 3 units(2,600 cfs) with another increase expected later this week. CVP operators are reluctant to increase Jones pumping until they see that how the incoming storm will affect salinity.
- Pumping is higher at Banks because the CVP owes the SWP some water under the Coordinated Operation Agreement. The CVP will be allowing the SWP to pump some of its water to the extent possible until the COA debt is paid off; possibly by early to mid January
- High delta inflows are expected to significantly increase turbidity by this weekend such that agency biologists are concerned about protecting delta smelt. The delta smelt BiOp calls for Old and Middle river reverse flow to be limited to -2000 cfs for 14 days if turbidity thresholds are exceeded in the southern delta. The daily OMR for yesterday was about -5000 cfs while the combined exports were about 8,100 cfs.
- The Delta Smelt Workgroup (comprised of State and Federal fish biologists) met today but no recommendation was made. The DSWG will continue to evaluate delta conditions, fish surveys, and export fish salvage as part of its possible recommendation to make an export reduction under the delta smelt BiOp.

Tom

From: Jason Peltier

Sent: Friday, December 12, 2014 10:59 AM

To: 'Karen Clark'; 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; 'Catherine Karen'; 'Dan Pope'; 'Darlene Knauf'; 'David Bernhardt'; 'Dennis Cardoza'; 'Denny Rehberg'; 'Doug Subers'; 'Ed Manning'; 'Erick Mullen'; 'Gayle Holman'; 'Jim Watson'; 'Joe Findaro'; 'Mike Burns'; 'Sheila Greene'; 'Susan Ramos'; T Birmingham (tbirmingham@westlandswater.org)

Subject: No Delta tour

Too few were able to make the tour options so we will hold off until a better time.

From: Karen Clark [mailto:kclark@westlandswater.org]

Sent: Thursday, December 11, 2014 3:11 PM

To: 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; Catherine Karen; Dan Pope; Darlene Knauf; 'David Bernhardt'; Dennis Cardoza; Denny Rehberg; 'Doug Subers'; 'Ed Manning'; Erick Mullen; 'Gayle Holman'; 'Jason Peltier'; Jim Watson; 'Joe Findaro'; 'Mike

Subject: Cancellation of PR/Legislation Call Tomorrow

Importance: High

Everyone,

Sorry for the late notice but we will not have a call tomorrow. We'll see everyone at the meeting on the 17th. Thanks!

~Karen

Karen Clark

Executive Assistant to Thomas W. Birmingham

Westlands Water District

P.O. Box 6056

Fresno, CA 93703

(c) [REDACTED]
(f) 559.241.6277

Email: kclark@westlandswater.org

From: Watts, John (Feinstein)

Sent: Monday, December 15, 2014 10:15 AM

To: Tom Birmingham; Bernhardt, David L.

Subject: Can you call me at some point (today, if possible) to discuss the attached confidential issues document? Thanks

Attachments: plan 12-15-14.docx; bill language 12-15-14.docx

Tom,

I hope you had a good weekend.

I know you have your board meeting this week and all that the meeting entails. If possible, can you call me at some point today to discuss the attached plan document? David is welcome to join as well. I have also attached the latest draft of the bill for your reference. Thanks.

Best,

John

<u>ISSUE</u>	<u>PLAN</u>
<p>The standard for what showing Interior must make to reduce pumping below - 5000 cfs flow in Old and Middle Rivers under the smelt biological opinion (current standard is a negative impact on the long-term survival of the species); (John)</p>	<ul style="list-style-type: none"> • Bezdek is going to think about simply accepting the jeopardy standard for smelt, talk to his people, and get back to Tom B and us • If we go this route, can we persuade the House not to include the jeopardy language on the salmon biop, which we don't believe is necessary (the whole salmon title is structured around finding alternative equivalent ways to protect the salmon, not certain required showings by the agencies to reduce pumping) and will provoke strong opposition from NMFS and likely the Administration as a whole?
<p>Approach to authorization of funding for storage projects; (Felix)</p>	<p>Feinstein staff need to discuss the framework for the authorization</p>
<p>The definition of drought; (John/Felix)</p>	<p>Bezdek is considering one recovery year instead of two. What do we think of this approach? If we go with one year recovery instead of two, are there any historical circumstances where two years were needed, and if so, how can we capture that?</p>
<p>Administration comments about particular language in the SWP contractor protection language on the Secretary of the Interior's required report to DWR; (John)</p>	<p>Bezdek is discussing with Mark Cowin and then Brent Walthall</p>
<p>The compromise language we are considering to qualify the CVPIA's doubling goal for striped bass by indicating that it does not limit efforts to reduce predation of endangered fish</p>	<p>Bezdek is reviewing</p>

(Felix)	
Title V, the water contractor title language; (John/Felix)	Bezdek will review and then call water contractors to discuss concerns – <u>by when?</u>
The language in the House draft on (b)(2) accounting (John)	Bezdek is reviewing – do we need to get him any additional materials?
The language in the House draft about the purposes of the CVPIA and making up the (b)(2) water (John)	Need to find out who is pushing this language, since it is not Westlands. I think as written it is vague and confusing about what exactly it means to make up the 800,000 acre feet of water -- can we persuade the House to drop it?
Reclamation's concerns with West-wide storage feasibility study streamlining language	Slower track, separate west-wide bill. Need to set up process with Bezdek, Kiel Weaver, and Chris Kearney to discuss.
CEQ's concerns with MAP-21 language (Felix)	Slower track, separate west-wide bill, but need to discuss with CEQ
Improving storage authorization language in existing bill (James)	
	Check with Bezdek if he has any other major issues with language sent him

SECONDARY ISSUES

Cost-share issue on safety of dam language in existing bill (James)	
Army Corps flood control reoperation language (James)	House deleted -- will House reconsider?
Los Vaqueros language	House deleted -- will House reconsider?

[illegible]

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Title: To provide drought relief in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “California Drought Relief Act of 2014”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

**TITLE I—ADJUSTING DELTA SMELT MANAGEMENT
BASED ON INCREASED REAL-TIME MONITORING AND
UPDATED SCIENCE**

Sec.101.Definitions.

Sec.102.Revise incidental take level calculation to reflect new science.

Sec.103.Factoring increased real-time monitoring and updated science into ~~delta~~-Delta smelt management.

**TITLE II—ENSURING SALMONID MANAGEMENT IS
RESPONSIVE TO NEW SCIENCE**

Sec.201.Definitions.

Sec.202.Required scientific studies.

Sec.203.Process for ensuring salmonid management is responsive to new science.

Sec.204.Pilot program to protect native anadramous fish in the Stanislaus River.

Sec.205.CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.

~~Sec.206.Mark fishery and harvest management.~~

~~Sec.207.New actions to benefit Central Valley salmonids.~~

**TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT
RELIEF**

Sec.301.Findings.

Sec.302.Definitions.

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- 1 Sec.303.Operational flexibility in times of drought.
2 Sec.304.Operation of cross-channel gates.
3 Sec.305.Flexibility for export/inflow ratio.
4 Sec.306.Emergency environmental reviews.
5 Sec.307.Prioritizing State revolving funds during droughts.
6 Sec.308.Increased flexibility for regular project operations.
7 Sec.309.Temporary operational flexibility for first few storms ~~of 2015 water year~~ of the water
8 year.
9 Sec.310.Expediting water transfers.
10 ~~Sec.311.Warren Act contracts.~~ [PLACEHOLDER]
11 Sec.401.Findings.
12 Sec.402.CalFed storage feasibility studies.
13 Sec.403.Water storage project construction-
14 ~~Sec.404.Other storage feasibility studies.~~
15 ~~Sec.406.Updating water operations manuals for non Federal projects.~~
16 Sec.501.Protections for State water project contractors.
17 Sec.502.Area of origin protections.
18 Sec.503.No redirected adverse impacts.
19 Sec.504.Effect on State laws.
20 Ses. 505. Sacramento River Watershed Water Service Contractors

21 TITLE VI—MISCELLANEOUS

- 22 Sec.601.Authorized service area.
23 ~~Sec.602.Rescheduled water.~~
24 ~~Sec.605.Water operations review panel.~~
25 Sec. 604. Implementation of Water Replacement Plan
26 Sec. 605. Natural and Artificially Spawned Species
27 Sec. 606. Amendment to Purposes
28 Sec. 607. Amendment to Definitions

30 SEC. 2. FINDINGS.

31 Congress finds that—

- 32 (1) As established in the Proclamation of a State of Emergency issued by the Governor of

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the State on January 17, 2014, the State is experiencing record dry conditions;

(2) Extremely dry conditions have persisted in the State since 2012, and the drought conditions are likely to persist into the future;

(3) As of September 2014, the National Weather Service’s forecast does not show a high likelihood of the State experiencing above-normal precipitation for the remainder of the calendar year;

(4) The water supplies of the State are at record-low levels, as indicated by the fact that all major Central Valley Project reservoir levels were at 20-35 percent of capacity as of September 25, 2014;

(5) The lack of precipitation has been a significant contributing factor to the 6,091 fires experienced in the State as of September 15, 2014, and which covered nearly 400,000 acres;

(6) According to a study released by the University of California, Davis in July 2014, the drought has led to the fallowing of 428,000 acres of farmland, loss of \$810 million in crop revenue, loss of \$203 million in dairy and other livestock value, and increased groundwater pumping costs by \$454 million. The statewide economic costs are estimated to be \$2.2 billion, with over 17,000 seasonal and part-time agricultural jobs lost;

(7) CVPIA Level II water deliveries to refuges have also been reduced by 25% in the north of Delta region, and by 35% in the south of Delta region;

(8) Only one-sixth of the usual acres of rice fields are being flooded this fall, which leads to a significant decline in habitat for migratory birds and an increased risk of disease at the remaining wetlands due to overcrowding of such birds;

(9) The drought of 2013 through 2014 constitutes a serious emergency that poses immediate and severe risks to human life and safety and to the environment throughout the State;

(10) The serious emergency described in paragraph (4) requires—

(A) immediate and credible action that respects the complexity of the water system of the State and the importance of the water system to the entire State; and

(B) policies that do not pit stakeholders against one another, which history shows only leads to costly litigation that benefits no one and prevents any real solutions;

(11) Federal law (including regulations) directly authorizes expedited decision making procedures and environmental and public review procedures to enable timely and appropriate implementation of actions to respond to the type and severity of the serious emergency described in paragraph (4); and

(12) The serious emergency described in paragraph (4) fully satisfies the conditions necessary for the exercise of emergency decision making, analytical, and public review requirements under—

(A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(C) water control management procedures of the Corps of Engineers described in section 222.5 of title 33, Code of Federal Regulations (including successor

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regulations); and

(D) the Reclamation States-Emergency Drought Relief Act of 1991 (Public Law 102-250; 106 Stat. 53).

(13) The 2008 smelt biological opinion and 2009 salmonid biological opinion contain reasonable and prudent alternatives intended to avoid the likelihood of jeopardy for listed species or resulting in the destruction or adverse modification of critical habitat of listed species protect listed fish species from being jeopardized by operation of the Central Valley Project and State Water Project and to prevent adverse modification of designated critical habitat;

Formatted: Highlight

(14) The effect of those reasonable and prudent alternatives in the biological opinions may restrict the amount of water pumping that can occur to deliver water for agricultural, municipal, industrial, groundwater, and refuge uses in California;

(15) Data on the difference between water demand and reliable water supplies for various regions south of the ~~delta~~ Delta, including the San Joaquin Valley, indicate there is a significant annual gap between reliable water supplies to meet agricultural, municipal and industrial, groundwater, and refuges water needs within the South of Delta and Friant Division of the Central Valley Project and the State Water Project south of the Sacramento-San Joaquin River Delta and north of the Tehachapi mountain range and the demands of those areas. This gap varies depending on the methodology of the analysis performed, but can be represented in the following ways:

(A) For Central Valley Project South-of-Delta water service contractors, if it is assumed that a water supply deficit is the difference in the amount of water available for allocation versus the maximum contract quantity, ~~particularly in more recent years,~~ then the water supply deficits that have developed from 1992 to 2014 as a result of legislative and regulatory changes besides natural variations in hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

(B) For Central Valley Project and State Water Project water service contractors south of the Delta and north of the Tehachapi mountain range, if it is assumed that a water supply deficit is the difference between reliable water supplies, including maximum water contract deliveries, safe yield of groundwater, safe yield of local and surface supplies and long-term contracted water transfers, and water demands, including water demands from agriculture, municipal and industrial and refuge contractors, then the water supply deficit ranges between approximately 2,500,000 to 2,700,000 acre-feet.

~~(C) The California Water Plan evaluated outcomes under current conditions under 198 combinations of climate and growth scenarios, projecting a range of urban and agricultural reliability into the future. Reliability in this instance is defined as the percentage of years in which demand is sufficiently met by supply. Reliability across a range of futures within the San Joaquin Valley can be presented as:~~

(A) Expert panel reviews have concluded that instantaneous water velocities in the tidal Delta affect juvenile salmonids, not “tidally average” flows, as previously assumed. Based on instantaneous water velocity modeling, water exports have a much smaller area of effect than was previously believed;

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(B) Tagging studies conducted since 1993 (representing more than 28 million fish) demonstrate that the proportion of Sacramento Basin origin Chinook salmon entrained into the pumping facilities (including pre-screen losses) are on average less than 1/10 of 1%; and

(C) Telemetric studies of Sacramento Basin and San Joaquin Basin origin juvenile Chinook salmon have not demonstrated any significant adverse effect from water exports on fish survival.

(17) Data of pumping activities at the Central Valley Project and State Water Project delta pumps identifies that, on average from Water Year 2009 to Water Year 2014, take of Delta smelt is 80 percent less than allowable take levels under pumping activity takes 893 delta Delta smelt annually with an authorized take level of 5,003 delta Delta smelt annually according to the biological opinion issued December 15, 2008.

(18) Data of field sampling activities of the Interagency Ecological Program located in the Sacramento-San Joaquin Estuary identifies that, on average from 2005 to 2013, the program “takes” 3,500 delta smelt during annual surveys with an authorized “take” level of 33,480 delta smelt annually – according to the biological opinion issued December 9, 1997.

~~(1819)~~ It is worth exploring whether there is a way to implement the biological opinions that would preserve the protections afforded listed fish and simultaneously increase water deliveries to the Central Valley Project and State Water Project without weakening environmental laws or protections.

~~(1920)~~ In 2014, better information exists than was known in 2008 concerning conditions and operations that may or may not lead to high salvage events that jeopardize the fish populations, and what alternative management actions can be taken to avoid jeopardy.

~~(2021)~~ Alternative management strategies, such as trapping and barging juvenile salmon through the Delta, removing non-native species, enhancing habitat, ~~and~~ monitoring fish movement and location in real-time, and improving water quality in the Delta can contribute significantly to protecting and recovering these endangered fish species, and at potentially lower costs to water supplies.

~~(2122)~~ Resolution of fundamental policy questions concerning the extent to which application of the Endangered Species Act affects the operation of the Central Valley Project and State Water Project is the responsibility of Congress.

SEC. 3. DEFINITIONS.

In this Act:

(1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

(2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the C.W.C. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.

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(3) LISTED FISH SPECIES.—The term “listed fish species” means listed salmonid species and the Delta smelt.

(4) LISTED SALMONID SPECIES.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon ~~including hatchery steelhead or salmon populations~~ within the evolutionary significant unit (ESU) or distinct population segment (DPS).

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(5) Significant NEGATIVE IMPACT ON THE LONG-TERM SURVIVAL.—The term “significant negative impact on the long-term survival” means to reduce appreciably the likelihood of ~~both the survival and recovery~~ of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

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(6) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(7) OMR FLOW OF -5000 CFS.—The term “OMR flow of -5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as ~~described in~~ measured by—

(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(8) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.

(9) SMLT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.

(10) STATE.—The term “State” means the State of California.

TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

SEC. 101. DEFINITIONS.

In this title:

(1) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

(2) DELTA SMELT.—The term “~~delta~~ Delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

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SEC. 102. REVISE INCIDENTAL TAKE LEVEL
CALCULATION FOR DELTA SMELT TO REFLECT NEW
SCIENCE.

(a) No later than October 1, 2015, and at least every five years thereafter, the Director of Fish and Wildlife Service, in cooperation with other federal, state, and local agencies, shall using the best scientific and commercial data available, review, and if warranted,

if modify the method used to calculate the incidental take levels for adult and larval/juvenile Delta smelt in the smelt biological opinion that takes into account all life stages, among other considerations,—

- (1) salvage information collected since at least 1993; available over at least 18 years;
- (2) updated or more recently developed statistical models;
- (3) updated scientific and commercial data; and
- (4) the most recent information regarding the environmental factors driving ~~delta-Delta~~ smelt salvage.

(b) Modified Incidental Take Level.—Unless the Director determines in writing that one or more of the requirements described in paragraphs (1) through (4) below are not appropriate, the modified incidental take level described in subsection (a) shall—

- (1) Be normalized for the abundance of prespawning adult Delta smelt using the Fall Midwater Trawl Index or other index;
- (2) Be based on a simulation of the salvage that would have occurred from 1993 through 2012 if OMR flow has been consistent with the smelt biological opinions;
- (3) Base the simulation on a correlation between annual salvage rates and historic water clarity and OMR flow during the adult salvage period; and
- ~~(1)(4)~~ Set the incidental take level as the 80 percent upper prediction interval derived from simulated salvage rates since at least 1993;

SEC. 103. FACTORING INCREASED REAL-TIME
MONITORING AND UPDATED SCIENCE INTO DELTA
SMELT MANAGEMENT.

(a) In General.—The ~~Secretary~~ Director shall use the best scientific and commercial data available to implement, continuously evaluate, and refine or amend, as appropriate, the reasonable and prudent alternative described in the 2008 delta-smelt biological opinion, as amended, and any successor opinions or court order, shall be implemented consistent with current best scientific and commercial data available, and implementation shall be adjusted accordingly as new scientific and commercial data are developed. The Secretary shall make all significant decisions that implement the smelt biological opinion, or any successor opinions, in writing, and shall document the significant facts upon which such decisions are made, consistent with Section 706 of Title 5 of the United

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States Code.

(b) Increased Monitoring to Inform Real-time Operations.— ~~Contingent upon funding,~~
~~the~~ The Secretary shall conduct additional surveys, on an annual basis at the appropriate
time of the year based on environmental conditions, in collaboration with other ~~delta~~
Delta science interests.

(1) In implementing this section, ~~after seeking public input,~~ the Secretary shall —

(A) use the best available survey methods, based on accuracy, precision,
reliability, accommodation of multiple species, and take of listed species, for
the detection of Delta smelt to determine the extent that adult Delta smelt are
distributed in relation to certain levels of turbidity, or other environmental
factors that shall influence salvage rate; and

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(B) use the results from the survey methods described in subparagraph (A) to
determine how the Central Valley Project and State Water Project may be
operated more efficiently to minimize salvage while maximizing export
pumping rates without causing a negative impact on the long term survival of
the Delta smelt. ~~use the most appropriate accurate survey methods available~~
~~for the detection of delta Delta smelt to determine the extent that adult delta~~
~~Delta smelt are distributed in relation to certain levels of turbidity, or other~~
~~environmental factors that may influence salvage rate; and~~

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(2) During the period beginning on December 1, 2014 and ending March 31, 2015,
and in each successive December through March period, if suspended sediment loads
enter the Delta from the Sacramento River and the suspended sediment loads appear
likely to raise turbidity levels in Old River north of the export pumps from values
below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the
Secretary shall—

(A) conduct daily monitoring using appropriate survey methods at locations
including, but not limited to, the vicinity of Station 902 to determine the extent
that adult Delta smelt are moving with turbidity toward the export pumps; and

(B) use results from the monitoring surveys referenced in paragraph (A) at
~~locations including, but not limited to, the vicinity of Station 902 to determine~~
how increased trawling can inform daily real-time Central Valley Project and
State Water Project operations to minimize salvage while maximizing export
pumping rates ~~of water export without causing a significant negative impact on~~
~~the long-term survival of the Delta smelt.~~

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(c) Periodic Review of Monitoring.— Within twelve months of the date of enactment of
this title, and Atat least once every 5 years thereafter, or sooner if the Secretary
~~determines it is appropriate,~~ the Secretary shall—

(1) evaluate whether the monitoring program under subsection (b), combined with
other monitoring programs for the Delta, is providing sufficient data to inform

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Central Valley Project and State Water Project operations to minimize salvage while maximizing export pumping rates without causing a negative impact on the long-term survival of the Delta smelt; and

(2) determine whether the monitoring efforts should be changed in the short- or long-term to provide more useful data.

(d) Delta Smelt Distribution Study.—

(1) IN GENERAL.— No later than January 1, 2016, and at least every five years thereafter, contingent upon funding, the Secretary the Secretary, in collaboration with the California Department of Fish and Wildlife, the California Department of Water Resources, public water agencies, and other interested entities, Delta science partners, shall evaluate and implement, as appropriate, implement new targeted sampling and monitoring specifically designed to understand delta-Delta smelt abundance, distribution, and the types of habitat occupied by delta-Delta smelt during all life stages.

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(2) SAMPLING.—The Delta smelt distribution study shall, at a minimum—

(A) include recording water quality and tidal data;

(B) be designed to understand delta-Delta smelt abundance, distribution, habitat use, and movements throughout the Bay-Delta, Suisun Marsh, and other areas occupied by the Delta smelt during all seasons;

(C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

(D) use the most biologically appropriate survey methods, including sampling gear, best suited to collect the most accurate data for the type of sampling or monitoring.

(e) Scientifically supported implementation of Old and Middle River flow requirements.—In implementing the provisions of the smelt biological opinion, or any successor biological opinion, pertaining to management of-reverse flow in the Old and Middle Rivers, the Secretary shall—

(1) consider the relevant provisions of the biological opinion or any successor biological opinion;

(2) operating within the range provided for in the smelt biological opinion, or any successor biological opinion, to minimize water supply reductions for the Central Valley Project and the State Water Project, manage reverse flow in Old and Middle Rivers at -5,000 cfs unless scientific evidence developed pursuant to subparagraphs 103(e)(3) and (4) indicate a less negative OMR flow is necessary to avoid a negative impact on the long-term survival of the Delta smelt, operating within the range provided for in the smelt biological opinion or any successor biological opinion.

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(3) document in writing any significant facts about real-time conditions relevant to the determinations of reverse OMR flow rates, including—

(A) whether targeted real-time fish monitoring in Old River pursuant to this section, including monitoring in the vicinity of Station 902, indicates that a significant negative impact on the long-term survival of the significant increase in the salvage of Delta smelt is imminent; and

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(B) whether near-term forecasts with available salvage models show under prevailing conditions that OMR flow of -5000 cubic feet per second will cause a significant negative impact on the long-term survival of the significantly increased take of delta smelt; and

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(4) show in writing that any determination to manage OMR reverse flow at rates less negative than -5000 cubic feet per second is necessary to avoid a significant negative impact ~~jeopardy on~~ the long-term survival of the Delta smelt, including an explanation of the data examined and the connection between those data and the choice made, after considering:

(A) the findings in paragraph (3);

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~~(B)~~ whether continued project operations over the remainder of the water year would exceed the incidental take level;

~~(C)~~ the potential effects of documented, quantified entrainment on subsequent smelt abundance, including consideration of the distribution of the population throughout the Delta,

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~~(D)~~ the water temperature,

~~(E)~~ other significant factors relevant to the determination; and

~~(F)~~ whether any alternative measures could have a substantially lesser water supply impact.

~~(5)~~ for any subsequent biological opinion, make the showing required in paragraph (4) for any determination to manage OMR reverse flow at rates less negative than the upper limit in the biological opinion. if the upper limit in the biological opinion is more negative than -5,000 cubic feet per second.

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(f) Memorandum of Understanding. No later than December 1, 2014, the Commissioner and the Director shall execute a Memorandum of Understanding (MOU) to ensure that the smelt biological opinion is implemented in a manner that maximizes water supply while complying with applicable laws and regulations. If that MOU alters any procedures set out in the biological opinion, there shall be no need to reinstate consultation if those changes do not have n adverse effect on listed species and the implementation of the MOU would not be a major change to implementation of the

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biological opinion. Any change to procedures that does not create a new adverse effect to listed species shall not alter application of the take exemption in the incidental take statement in the biological opinion under the Endangered Species Act, section 7(o)(2).

(g) Calculation of Reverse Flow in OMR.—Within 180 90 days of the enactment of this title, the Secretary is directed, in consultation with the California Department of Water Resources to revise the method used to calculate reverse flow in Old and Middle Rivers for implementation of the reasonable and prudent alternatives in the smelt biological opinion and the salmonid biological opinion, and any succeeding biological opinions, for the purpose of achieving better real-time management of Old and Middle River flow and potentially increasing Central Valley Project and State Water Project water supplies. The method of calculating reverse flow in Old and Middle Rivers shall be reevaluated not less than every five years thereafter to facilitate real-time decisionmaking and to help achieve maximum export pumping rates within limits established by the smelt biological opinion, the salmonid biological opinion, and any succeeding biological opinions.

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TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

SEC. 201. DEFINITIONS.

In this title:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator of NOAA Fisheries.

(2) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

(3) Other Affected Interests. — The term “other affected interests” refers to entities and people that could be impacted by existing or alternative management measures, including means the State of California, subdivisions of the State of California, public water agencies and those who benefit directly and indirectly from the multipurpose operations of the Central Valley Project and the State Water Project.

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(4) Commissioner.—The term “Commissioner” means the Commissioner of the Bureau of Reclamation.

(5) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

SEC. 202. REQUIRED SCIENTIFIC STUDIES.

(a) Trap and Barge Pilot Project to Increase Survivals Through the Delta.—The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife

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1 Service, the California Department of Fish and Wildlife, water agencies, and other interested
2 parties, design, permit, implement and evaluate a pilot program to test the efficacy of an
3 experimental trap and barge program to improve survival of juvenile salmonids emigrating from
4 the San Joaquin watershed through the Delta, as further described below.

5 (1) Within 30 days of enactment, the Assistant Administrator and the Commissioner shall
6 convene a working group of the relevant agencies and other interested parties through
7 which to develop and execute a plan for the design, budgeting, implementation and
8 evaluation of such a pilot program, utilizing existing expertise on such trap and barge
9 programs as may be available. Such plan shall detail a schedule and budget for the
10 program, and identify the responsible parties for each element of the program.

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11 (2) The Assistant Administrator and the Commissioner shall provide an opportunity for
12 30 days of public review and comment on the pilot program and also simultaneously seek
13 an expeditious independent peer review of the program to improve its rigor and likelihood
14 of success.

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15 (3) Within 60 days of ~~Upon~~ completion of (2), above, the Assistant Administrator and the
16 Commissioner shall complete the necessary design and evaluations of the pilot program and
17 seek such ~~authorizations and permits~~ or other regulatory authorizations as may be required
18 under federal law for its prompt implementation and evaluation by the Assistant
19 Administrator, the Commissioner or such other parties as they determine most suitable.

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20 (4) ~~Subject to the availability of funding,~~ The Assistant Administrator and the
21 Commissioner shall seek to commence implementation of the pilot program in 2015 or as
22 soon thereafter as is possible, and shall conduct such pilot for such period of time as needed
23 to evaluate the efficacy of the program to improve survivals across a range of environmental
24 conditions.

25 (5) The Assistant Administrator and the Commissioner shall jointly report annually to the
26 Senate Environment and Public Works Committees on the Environment and Public Works
27 and Energy and Natural Resources and the House Committee on Natural Resources their
28 progress in implementing this section, estimated survival rates through the Delta for both
29 juvenile salmonids that were barged through the Delta and those that were not barged, and if
30 survival rates are significantly higher for barged fish as compared to other outmigrating
31 smolts, the Assistant Administrator's and Commissioner's recommendations regarding
32 broadening the pilot program and any relevant recommendations pursuant to section 203.

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33 (6) The pilot program is hereby found to be consistent with the requirements of the Central
34 Valley Project Improvement Act (Public Law 102-575). No provision, plan or definition
35 established or required by the Central Valley Project Improvement Act (Public Law 102-
36 575) shall be used to prohibit the imposition of the pilot program, or to prevent the
37 accomplishment of its goals.

38
39 (b) Tagging studies.

40 (1) IN GENERAL.—The Assistant Administrator, in collaboration with other ~~delta~~ Delta

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science partners, shall implement tagging studies, including acoustic telemetry and PIT tagging studies as appropriate, wherein habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed. Studies may also be conducted to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—The sampling—

(A) shall include recording water quality and tidal data;

(B) will be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of through Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) will supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers which the Assistant Administrator determines are crucial for trend monitoring.

(c) The Assistant Administrator shall accept and review through the adaptive management procedures in the salmonid biological opinion recommendations from Central Valley Project and State Water Project service area water contractors on studies of other alternative management measures that may increase the survival of listed salmonid species and implement alternative management measures the Assistant Administrator determines are appropriate.

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SEC. 203. PROCESS FOR ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.

(a) General directive. The reasonable and prudent alternative described in the salmonid biological opinion allows for and anticipates adjustments in project operation parameters ~~operating criteria~~ to reflect the best scientific and commercial data currently available, and authorizes efforts to test and evaluate improvements in operations that will meet applicable regulatory requirements and maximize enable improvements in water supply reliability. Implementation of the reasonable and prudent alternative described in the salmonid biological opinion shall be adjusted accordingly as new scientific and commercial data are developed. The Commissioner and the Assistant Administrator ~~shall fully are hereby directed to~~ utilize these authorities ~~fully~~ as described below.

(b) Annual reviews of certain project operations ~~operating criteria~~. No later than December 31, 2015, and at least annually thereafter,

(1) The Commissioner, ~~in consultation with and~~ with the assistance of the Assistant Administrator, shall ~~commence annual efforts to~~ examine and identify adjustments to the initiation of Action IV.2.3 pertaining to negative OMR flows, subject to paragraph (5).

(2) The Commissioner, with the assistance of the Assistant Administrator, shall examine and identify adjustments in the timing, triggers or other operational details relating to the implementation of pumping restrictions in Action IV.2.1 pertaining to the inflow to export requirements, subject to paragraph (5).

(3) Pursuant to the ~~consultation and~~ assessments carried out under paragraphs (1) and (2) of this subsection, the Commissioner and the Assistant Administrator shall ~~jointly~~ make recommendations to the ~~Assistant Administrator~~ Secretary of the Interior and to the

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1 Secretary of Commerce on adjustments to project operations that, in the exercise of the
2 adaptive management provisions of the salmonid biological opinion, will reduce water
3 supply impacts of the salmonid biological opinion on the Central Valley Project and the
4 California State Water Project and are consistent with the requirements of applicable law
5 and as further described in subsection (c).

6 (4) The Secretary of Commerce and the Secretary of the Interior shall direct the
7 Commissioner and Assistant Administrator to implement recommended adjustments to
8 project operations for which the conditions under subsection (c) are met.

9 (5) The Assistant Administrator and the Commissioner shall review and identify
10 adjustments to project operations with water supply restrictions in any successor biological
11 opinion to the salmonid biological opinion, applying the provisions of this section to those
12 water supply restrictions where there are references to Actions IV.2.1 and IV.2.3.

13 (c) ~~Adjustments to project operations that shall be implemented. After In receiving~~
14 ~~reviewing the recommendations under subsection (b), the Secretary of the Interior and the~~
15 ~~Secretary of Commerce secretaries shall direct the Commissioner and the Assistant~~
16 ~~Administrator to implement those operational adjustments, or any recommendations the~~
17 ~~Assistant Administrator shall evaluate the effects of the recommended adjustments on listed~~
18 ~~species and shall recommend to the Commissioner adjustments for combination, for which, in~~
19 ~~aggregate:~~

20 (1) the net effect on listed species is equivalent to those of the underlying project
21 operational parameters criteria in the salmonid biological opinion, taking into account both

22 (i) efforts to minimize the adverse effects of the adjustment to project operations;
23 and

24 (ii) whatever additional actions or measures may be implemented in conjunction with
25 the adjustments to operations to offset the adverse effects to listed species, consistent
26 with (d), that are in excess of the adverse effects of the underlying operational
27 parameters, if any; and mitigate its effects; and

28 ~~(1)(2)~~ the effects of the adjustment can be reasonably expected to fall within the
29 incidental take authorizations.

30 (d) ~~Taking into account offsetting species survival benefits from other measures.~~

31 (1)-When examining and identifying opportunities to offset the potential adverse effect of
32 adjustments to operations under subsection (c)(1)(ii), the Commissioner
33 and the Assistant Administrator shall take into account the potential species
34 survival improvements that are likely to result from other measures which, if implemented
35 in conjunction with such adjustments, would offset adverse effects, if any of the
36 adjustments. When evaluating offsetting measures, the Commissioner and the
37 Assistant Administrator shall consider the type, timing and nature of the adverse effects, if
38 any, to specific species and ensure that the measures likely provide equivalent overall
39 benefits to the listed species in the aggregate, as long as the change in survival rates for each
40 species remains consistent with the Endangered Species Act and implementing regulations

41 (e) Framework for examining opportunities to minimize or offset the potential adverse effect of
42 adjustments to operations operating criteria.—Not later than December 31, 2015, and every

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five years thereafter, the Assistant Administrator shall, in collaboration with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) ~~with-through restrictions on export pumping rates restrictions~~ as specified by Action IV.2.3 as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) ~~with-through~~ San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1 as compared to the ~~export~~ restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) ~~by-through~~ a trap and barge program based on the experience of other systems to the extent they are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through the installation of temporary barriers, the management of Cross Channel Gates operations, and other projects affecting flow in the Delta;

(7) ~~by-through~~ salvaging fish that ~~may behave been~~ entrained near the entrance to Clifton Court Forebay; and

(8) ~~through by~~ any other management measures that may provide equivalent or better protections benefits for listed species- while maximizing export pumping rates without causing a significant negative impact on the long term survival of a listed salmonid species ~~species~~ with improvements to water supplies.

(9) through development and implementation of conservation hatchery programs for salmon and steelhead to aid in the recovery of listed salmon and steelhead species.

(f) ~~Survival estimates to be quantitative to the maximum extent feasible.~~

(1) To the maximum extent feasible, the Assistant Administrator shall make quantitative estimates of survival such as a range of percentage increases in through-Delta survival that could result from the management measures, and if the scientific information is lacking for quantitative estimates, shall do so on qualitative terms based upon the best available science.

(2) If the Assistant Administrator provides qualitative survival estimates ~~of the benefits to the for a species resulting~~ from one or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in subsection (e) in terms of their most likely expected contribution to increased through-Delta survival relative to the other measures.

(3) If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued ~~the and~~ estimates of increased through-Delta survival ~~benefits~~

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from different management measures pursuant to subsection (e), the Secretary shall compare the protections to the species from different management measures based on the best scientific and commercial data available at the time.

- (g) Comparison of adverse consequences for alternative management measures of equivalent equal protection for a species benefit to the salmon. —

(1) For the purposes of this subsection and subsection (c) —

(A) The alternative management measure or combination of alternative management measures identified in paragraph (2) shall be known as the “equivalent alternative measure.”

(B) The existing measure or measures identified in subparagraphs (2)(A),(B),(C), or (D) shall be known as the “equivalent existing measure.”

(C) An “equivalent increase in through-Delta survival rates for listed salmonid species” shall mean an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not ~~necessarily~~ the same change for each individual species, as long as the change in survival rates will not cause a significant negative impact on the long term survival of a listed salmonid for each species remains consistent with the Endangered Species Act and implementing regulations.

(2) As part of the reviews of project operations pursuant operating criteria pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures listed in subsection (e)(3) through (8) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) through restrictions on export pumping rates with export restrictions as specified by Action IV.2.3, as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable;

(B) through restrictions on export pumping rates with export restrictions as specified by Action IV.2.3, as compared to a modification of Action IV.2.3 that would provide additional water supplies, other than that described in subparagraph (A);

(C) through with San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to the ~~export~~ restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, or

(D) through San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to a modification of Action IV.2.1 that would reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project. other than that described in subparagraph (C).

(3) If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether

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(A) it is technically feasible and within federal jurisdiction to implement the equivalent alternative measure ~~or~~

~~(B) it is technically feasible to implement the alternative measure and the Assistant Administrator certifies that state or local agencies or other entities have agreed to implement it; the State of California, or subdivision thereof, or local agency with jurisdiction has certified in writing to the Assistant Administrator that it has the authority and capability to implement the pertinent equivalent alternative measure, and~~

~~(C)~~ the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) If the Assistant Administrator makes the findings in subparagraph (3)(A) and (B), the ~~Assistant Administrator and the Commissioner shall adjust project operations the operating criteria in the salmonid biological opinion pursuant to this subsection to implement the~~ equivalent alternative measure in place of the equivalent existing measure in order to increase ~~export rates of pumping water supplies~~ to the greatest extent possible while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

(h) Tracking adverse effects beyond the range of effects accounted for in the salmonid biological opinion and coordinated operation with ~~the~~ smelt biological opinion.

(1) Among the adjustments to the ~~project operation~~~~operational criteria~~ considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall

(A) Evaluate the effects on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) Consider requiring that before some or all of the provisions of Actions IV.2.1. or IV.2.3 are imposed in any specific instance, the Assistant Administrator show that the implementation of these provisions in that specific instance is necessary to ~~avoid a significant negative impact on the long-term survival of a listed salmonid species;~~ additional adverse effects upon listed salmonid species beyond the range of effects analyzed and accounted for in the salmonid biological opinion.

(2) The Assistant Administrator, the Director and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt and salmonid biological opinions, in order to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the biological opinions.

(i) Real-Time Monitoring and Management. The Assistant Administrator and the Commissioner shall, through the NMFS adaptive management salmonid biological opinion provisions, analyze whether date-certain triggers that limit OMR reverse flow to -5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids. If the analysis shows that the use of real-time information to trigger OMR flow limitations would improve water supply without ~~causing a significant negative impact on the long term survival~~

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Commented [A5]: This clause addresses alternative management measures that are technically feasible and outside federal jurisdiction, but which state, local, or other entities have agreed to implement.

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significant adverse effects to Winter-run Chinook salmon, then such real-time management triggers shall be implemented.

(i) If the quantitative estimates of through-Delta survival established by the Secretary for the management measures in (b)(2) exceed the through-Delta survival established for the RPAs, the Secretary shall evaluate and implement the management measures in (b)(2) as a prerequisite to implementing the RPAs contained in the BiOps.

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(k) Consistent with Section 706 of Title 5 of the United States Code, decisions of the Assistant Administrator and the Commissioner described in paragraphs (b) through (i) of Section 203 shall be made in writing, on the basis of best scientific and commercial data currently available, and shall document the significant facts upon which such decisions are made.

SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN THE STANISLAUS RIVER.

(a) Establishment of Non-native Predator Fish Removal Program- The Assistant Administrator and districts, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall jointly develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes from the Stanislaus River. The pilot program shall--

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(1) be scientifically based;

(2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;

(3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;

(4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act;

(5) be implemented as quickly as possible following the issuance of all necessary scientific research and species enhancement permits needed to begin the pilot program; and

(6) be implemented for a period of seven consecutive calendar years.

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(b) Management- The management of the pilot program shall be the joint responsibility of the Assistant Administrator and the districts. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting and conduct of the pilot program.

(c) Conduct-

(1) IN GENERAL- At the election of the By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.

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(2) PARTICIPATION BY NOAA FISHERIES- In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the Assistant Administrator has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. Such presence shall ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

(3) TIMING OF ELECTION- The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) Funding-

(1) CONTRIBUTED FUNDS- The Assistant Administrator is authorized to receive and expend contributed funds for the purposes for which the funds contributed in a like manner as if said sums had been specifically appropriated for said purposes.

(2) ANNUAL FUNDING- The districts shall be responsible through contributed funds for 100 percent of the cost of the pilot program. On or before December 1 of each year of the pilot program, the Assistant Administrator shall submit to the districts an estimate of the cost to be incurred by the NOAA Fisheries in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided through contributed funds, or any other fund as directed by the Assistant Administrator, by the districts on or before December 31 of each year, (a) the NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

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(3) ACCOUNTING- On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the districts. If the estimate paid by the districts was less than the actual costs incurred by the NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference to the fund indentified by the Assistant Administrator in subsection (d)(1), or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by the NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by the NOAA Fisheries, if any, in the next calendar year.

Administrator, by the districts on or before December 31 of each year. (a) the NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(e) Reporting and Evaluation-

(1) IN GENERAL- On or before the 15th day of each month, the Assistant Administrator shall post on the website of the NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(2) REPORT- On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for publication and peer reviewed report that--

(A) discusses the findings and conclusions of the pilot program;

(B) synthesizes the data collected under paragraph (1); and

(C) makes recommendations for further study and action.

(f) Permits Process-

(1) Not later than 180 days after filing of an application, the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 153(9)(a)(1)), for the performance of the pilot program.

(32) All permits issued shall be in the name of the NOAA Fisheries and the districts.

(43) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

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(4) The pilot program, including amendments thereto by the appropriate Federal and State agencies, shall be designed to meet the requirements of a conservation plan that complies with the requirements of Section 10(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)).

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~~(g) NEPA. Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not apply with respect to section 402 and the issuance of any permit under this subsection during the seven-year period beginning on the date of the implementation of the pilot program.~~

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(i) Definitions- For the purposes of this section:

(1) ASSISTANT ADMINISTRATOR- The term 'Assistant Administrator' means the Assistant Administrator of National Oceanic and Atmospheric Administration, NOAA Fisheries

(2) DISTRICTS- The term 'districts' means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

(3) PILOT PROGRAM- The term 'program' means the pilot non-native predator removal program established under this section.

(j) Sunset- The authorities provided under this section shall expire seven years after the implementation of the pilot program.

(a) FINDINGS.—Congress finds that—

(1) The Sacramento-San Joaquin Bay Delta and its Tributaries-

(A) is one of the largest and most diverse estuaries in the United States,

(B) is a natural treasure and a vital link in California's water system, and

(C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and

(D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.

(2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento-San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed's ecosystem.

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(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.

(5) If threats by nonnative species to native fish species are not addressed, there is a probability that native species of the Sacramento-San Joaquin Bay-Delta watershed's pelagic and anadromous community will go extinct.

(6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.

(7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

(1) Not later than January 1, 2017, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention, control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts, in consultation with the Secretary of Commerce, shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

- (i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and
- (ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and
- (iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

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1 (B) Phase 2. The Secretary of the Interior, in consultation with the Secretary of
2 Commerce, shall test the general viability of nonnative reduction methods, including
3 either direct predator removal or alteration of channel conditions, or some combination
4 thereof, through pilot projects at multiple sites in addition to the projects on the
5 Stanislaus River pursuant to Section 204, including known hotspots of predator
6 aggregation or activity, such as:

- 7 (i) Clifton Court Forebay,
- 8 (ii) Central Valley Project intakes,
- 9 (iii) Head of Old River,
- 10 (iv) Georgiana Slough,
- 11 (v) Old and Middle Rivers,
- 12 (vi) Franks Tract,
- 13 (vii) Paintersville Bridge,
- 14 (viii) individual river tributaries important for wild populations of
- 15 anadromous species listed as threatened or endangered under the Endangered
- 16 Species Act of 1973,
- 17 (ix) Human-made submerged structures, and
- 18 (x) Salvage release sites.

19 (C) Phase 3. If determined to be effective~~it is feasible to do so~~, the Secretary of the
20 Interior, and the Secretary of Commerce, shall implement nonnative reduction
21 methods at a larger number of sites, incorporating information learned during the first
22 and second phase.

23 (3) The Secretary of the Interior shall collect data associated with the implementation of
24 the projects above, and shall specifically collect data on the impact on

25 (A) pelagic and anadromous species listed as threatened or endangered under the
26 Endangered Species Act of 1973,

27 (B) water quality, and

28 (C) water supply.

29 (4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in
30 collaboration with the Secretary of Commerce and the Director of the California Department
31 of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable
32 and prudent alternatives contained in the salmonid biological opinion and the smelt
33 biological opinion, or other administrative federal requirements governing the operation of
34 the Central Valley Project and the State Water Project, that are likely to produce additional
35 fishery, water quality, and water supply benefits.

36 (5) After the pilot projects are complete, a report describing the results of the program
37 shall be used by the Assistant Administrator in making the survival estimates required by
38 Section 203(f).

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(c) IMPLEMENTATION. The Secretary of the Interior shall implement the CALFED program described in subpart (b) for at least a period of seven consecutive years beginning on the date of implementation.

(d) REPORTING REQUIREMENTS. The Secretary of the Interior shall provide reports to the Senate Committee on Environment and Public Works and Energy and Natural Resources and the House Committee on Natural Resources on the following:

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(1) No later than January 1, 2016, a description of the projects described in subpart (b), including the application for all necessary scientific research and species enhancement permits under section 10(a) (1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the CALFED invasive species Program.

(2) Upon the completion of Phase 1 as described in subsection (b)(1)(A), a report describing its implementation and cost effectiveness.

(3) Two years after the project begins, a report describing the progress of the eradication of the nonnative species in the Sacramento-San Joaquin Bay-Delta and its tributaries and how such efforts have helped the Recovery Plans for endangered and threatened Anadromous and Pelagic Species in the Sacramento-San Joaquin Bay-Delta watershed and the associated cost effectiveness of each control measure.

(4) After the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

(e) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

~~SEC. 206. MARK FISHERY AND HARVEST
MANAGEMENT.~~

SEC. 301. FINDINGS.

Congress finds that—

(1) Based on the congressional findings in Sec. 2 of this Act, it is appropriate and necessary for federal agencies to exercise the maximum amount of flexibility provided to them under the applicable laws and regulations to maximize delivery of water supplies while providing substantially similar levels of protection ~~the same or better reasonable and prudent levels of protection for species.~~

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SEC. 302. DEFINITIONS.

In this title:

(1) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(2) KLAMATH PROJECT.—The term “Klamath Project” means the Bureau of Reclamation project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(3) RECLAMATION PROJECT.—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(4) SECRETARIES.—The term “Secretaries” means—

(A) the Administrator of the Environmental Protection Agency;

(B) the Secretary of Agriculture;

(C) the Secretary of Commerce; and

(D) the Secretary of the Interior.

(5) STATE WATER PROJECT.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

(6) State.—The term “State” means the State of California.

SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT.

(a) Water Supplies.—

(1) IN GENERAL.—~~In response to a declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect~~For the period of time such that in any year that the Sacramento Valley Index is 6.5 or lower, or at the request of the State of California, and until the average annual delivery capability of the Central Valley Project and State Water Project has been restored for two succeeding water years following either of those events have been completed where the final Sacramento Valley Index is 7.8 or greater, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, State Water Project contractors, and any other tribe, locality, water agency, or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State.

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(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) do not result in a significant negative impact on the long-term survival of listed species within the Delta and provide benefits or have a neutral impact on for species protection and in-Delta water user water quality; and

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(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a complete written request for water transfer associated with voluntarily fallowing nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and

(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the fallowing and associated water transfer are in compliance with applicable Federal and state laws (including regulations);

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(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, resulting from the voluntary sale, transfers, or exchanges of water from agencies with rights resulting from the voluntary sale, transfers, or exchanges of water from agencies with rights resulting from the voluntary sale, transfers, or exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries on the condition that a proposed transfer or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations), and provided that Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights.

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(4) allow and facilitate, consistent with existing priorities, water transfers through the C.W. "Bill" Jones Pumping Plant or the Harvey O. Banks Pumping Plant from April 1 to November 30 provided water transfers comply with state and federal law, including the California Environmental Quality Act. Notwithstanding limitations on water transfers

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~~and~~

(1) IN GENERAL.— On request by the Governor of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation, or to local or State projects or operations that require decisions by the Secretary of the Interior or the Secretary of Commerce to provide additional water supplies if the project's or operation's purpose is to provide relief for emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request by the Governor of the State, the head of a Federal agency referenced in paragraph (1), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide relief for emergency drought conditions.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after the date on which the meeting request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project, subject to subsection (e)(2).

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

(f) 2015 Drought Plan. For the period of time such that in any year that the Sacramento Valley index is 6.5 or lower, or at the request of the State of California, and until the average annual delivery capability of the Central Valley Project and State Water Project has been restored for two succeeding years following either of those events have been completed where the final Sacramento Valley Index is 7.8 or greater. The Secretaries of Commerce and the Interior, in consultation with appropriate State officials, shall develop a drought operations plan for the duration of the existing drought emergency declaration of the State and until two

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that is consistent with the provisions of this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the current drought.

SEC. 304. OPERATION OF CROSS-CHANNEL GATES.

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenal salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State,

and for the period of time such that in any year that the Sacramento Valley index is 6.5 or lower, or at the request of the State of California, and until

two succeeding years

following either of those events have been completed where the final Sacramento Valley index is 7.5 or greater, consistent with operational criteria and monitoring criteria

developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with it;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2015, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the extent to which the gates are able to remain open.

(b) Recommendations.—After assessing the information collected under subsection (a), the Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternative contained in the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, that are likely to produce water supply benefits without causing a significant negative impact on the long-term survival fishery jeopardy or

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of the listed species within the Delta or negatively affecting water quality. The Secretary shall also coordinate with the State Water Resources Control Board to seek consistent direction for the operation of the Delta Cross-Channel Gates under federal and state law, including Water Right Decision 1641.

SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.

For the period of time such that in any year that the Sacramento Valley index is 6.5 or lower, or at the request of the State of California, and until two succeeding years following either of those events, have been completed where the final Sacramento Valley index is 7.8 or greater, the Central Valley Project, in coordination with the State Water Project may continue to vary the averaging period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control Board decision D1641—

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(1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the rising limb of a Delta inflow hydrograph; and

(2) to operate to a 14 day averaging period on the falling limb of the Delta inflow hydrograph.

SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.

To minimize the time spent carrying out environmental reviews and to deliver water quickly that is needed to address emergency drought conditions in the State during the duration of an emergency drought declaration, the head of each applicable Federal agency shall, in carrying out this Act, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency.

SEC. 307. PRIORITIZING STATE REVOLVING FUNDS DURING DROUGHTS.

(a) In General.—This section shall apply for each of the fiscal years during which an emergency drought declaration of the State is in effect.

(b) The Administrator of the Environmental Protection Agency, in implementing the processes and programs under the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for those projects that are eligible to receive assistance under section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2)),

(1) issue a determination of waivers within 30 days of the conclusion of the informal public comment period pursuant to section 436(c) of title IV of division G of Public Law 113–76; and

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(2) authorize, at the request of the State, 40-year financing for assistance under section 603(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of the Safe Drinking Water Act (42 U.S.C. 300j-12(f)(2)).

(c) Effect of Section.—Nothing in this section authorizes the Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) for any other State.

SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.

The Secretaries shall, consistent with applicable laws (including regulations)—

~~(1)~~

~~(1) to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards~~

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~~(23) contingent upon funding~~; in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State and elsewhere;

~~(34)~~ in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

~~(45) manage reverse flow in the Old and Middle Rivers at 5,000 cfs as prescribed by the smelt biological opinions issued by the United States Fish and Wildlife Service on December 15, 2008, for Delta smelt and by the National Marine Fisheries Service on June 4, 2009, for and the salmonids biological opinion, or any successor biological opinions, to maximizeminimize water supply reductions for the Central Valley Project and the State Water Project, and issue guidance no later than December 31, 2015 directing their employees to take all steps necessary to manage flow in accordance with this paragraph; Reductions in pumping to levels less negative than 5,000 cfs may be made subject to Sections 103(e)(3) and (4);~~

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~~(56)~~ as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper

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Division shall be with or to the respective State; and

(7) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY
FOR FIRST FEW STORMS OF DROUGHT THE WATER
YEARS OF 2015 WATER YEAR.

(a) Findings:

(1) During the 2014 water year, operations of the Central Valley Project and the State Water Project, the incidental take of adult Delta smelt was zero; of juvenile Delta smelt, 78 (7.7% of the incidental take limit level); of winter run chinook, 339 (1.4% of the incidental take limit level); of spring run chinook, zero; and of steelhead, 261 (8.7% of the incidental take limit level).

(2) The Central Valley Project and State Water Project exceeded an Old and Middle River flow of -5,000 cubic feet per second over a 14-day average for brief periods after three storm events in February and March 2014, as a result of increased pumping, but did not cause substantially increased take of smelt or salmon.

(3) Hydrological conditions in dry years, such as the 2014 water year, have not triggered water pumping restrictions pursuant to the ~~2008~~ smelt biological opinion.

(4) The Secretaries should be allowed more flexibility to increase pumping levels without causing significant risk to the listed species or weakening other environmental protections.

(5) ~~To address Given~~ California's severe drought conditions, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise for the duration of the existing drought emergency the flexibility provided herein to capture the maximum amount of ~~storm flows resulting from storm events when and if they occur in the 2015 water year,~~ and provide for the diversion of water to increase water those supplies to the Central Valley Project and State Water Project so that farms, businesses, and homes in drought-stricken areas will have an opportunity to bolster their meager supplies when water is available.

~~(5)(6)~~ It is reasonable to conclude that similar conditions will exist during future drought emergencies and regulatory relief during future first few storm events must be provided.

(b) In general. For the duration of a drought emergency. Consistent with avoiding additional

adverse effects on listed fish species beyond the range of those authorized under the Endangered Species Act and other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in Old and Middle River flows at -7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for up to 28 cumulative days after October 1 as described in subsection (c).

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(c) Days of temporary operational flexibility. The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(d) Compliance with ESA authorizations. In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid an additional adverse effects significant negative impacts on the long-term survival of a jeopardy on listed fish species beyond the range of those authorized under the Endangered Species Act.

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(e) Other environmental protections.

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year;

(2) During the first flush of sediment out of the Delta in each water year during the 2015 water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult delta-Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants;

(3) This section shall not have any effect affect on the the application the requirements of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act, in addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period. - unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act.

(4) During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to insure-ensure incidental take limits levels are not exceeded, and to identify potential negative impacts and actions, if any, necessary to mitigate any impacts of the temporary operational flexibility to listed species listed under the Endangered Species Act, 16 U.S.C. 1531–1544 as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531-1544; and

(5) The Commissioner is authorized to take any action, including the transfer of appropriated funds between accounts that, in the Commissioner's judgment, are necessary to mitigate the impacts of such operations as long as any such mitigation is consistent with the requirements of this section.

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(f) Technical adjustments to target period. If, before temporary operational flexibility has been implemented on 28 cumulative days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the 28 cumulative days specified in subsection (b).

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(g) Emergency consultation; effect on running averages.

(1) If necessary to implement the provisions of this section, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act and its implementing regulation at 50 CFR 402.05 to temporarily adjust the operating criteria under the biological opinions,

(A) solely for the 28 cumulative consecutive days of temporary operational flexibility—

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~~(i)(A)~~ no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (d) and (e); and

~~(ii)(B)~~ including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions, or

~~(B) for other adjustments to operating criteria or to take other urgent actions to address water supply shortages for the least amount of time or volume of diversion necessary as determined by the Commissioner.~~

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(2) Following the conclusion of the 21-28 cumulative consecutive days of temporary operational flexibility, the Commissioner shall not reinitiate consultation on these adjusted operations, and no mitigation shall be required, if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act. If the Commissioner reinitiates consultation, no mitigation measures shall be required during the pendency of the drought emergency. Any mitigation measures imposed must be based on quantitative data and required only to the extent that such data demonstrates actual harm to species.

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(h) Level of detail required for analysis. In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

~~(i) Duration. This section shall expire on September 30, 2015. This section shall apply during any water year when a gubernatorial drought declaration is in force.~~

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SEC. 310. EXPEDITING WATER TRANSFERS.

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

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(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking “In order to” and inserting the following:

“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

(A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”; and

(5) in paragraph (5) (as so designated), by adding at the end the following:

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”; and

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”

SEC. 311. Additional Emergency Consultation.

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SEC. 311. WARREN ACT CONTRACTS.

[To be supplied.]

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SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.

(a)) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of the Interior shall develop and offer to the Calaveras County

Water District (hereafter in this section referred to as the “CCWD”) a contract enabling the CCWD to impound and store up to 100,000 acre-feet of their Stanislaus River water rights in any excess capacity of the New Melones Reservoir in accordance with the terms and conditions of sections 1 through 3 of the Act of February 21, 1911 (43 U.S.C. 523–525; commonly known as the “Warren Act”). This stored water may be obtained for use by CCWD at a point, or points determined convenient to the District.

(b) OTHER TERMS AND CONDITIONS.—The terms and conditions of any contract entered into under subsection (a) shall—

(1) be for a term of not less than 20 years; and

(2) expressly provide that—

(A) the CCWD may use any water impounded and stored in the New Melones Reservoir for any legal purpose under California law, including use within the boundaries of the

CCWD, transfer to and reasonable and beneficial use by a person or entity not located with in the boundaries of CCWD, and for instream use in the Stanislaus River, the San Joaquin River, or the Sacramento-San Joaquin River

Delta; and

(B) any water impounded and stored by the district shall not be released or withdrawn if the end of month September storage level for New Melones Reservoir is projected to be equal to or below 300,000 acre-feet, but in such event the impounded and stored water shall be retained in the New Melones Reservoir for use by the district in the following year, subject to the same 300,000 acre-foot minimum storage requirement, and without additional payment being required.

[To be supplied.]

TITLE IV—INCREASING WATER STORAGE

SEC. 401. FINDINGS.

Congress finds that—

(1) the record drought conditions being experienced in the State as of the date of

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enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State;

(3) Congress authorized relevant feasibility studies for 4 water storage projects in the State, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of Public Law 108–361 (118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of Public Law 108–361 (118 Stat. 1684);

(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of Public Law 108–361 (118 Stat. 1684); and

(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of Public Law 108–361 (118 Stat. 1684);

(4) (A) as of the date of enactment of this Act, it has been more than 10 years since the authorization of the feasibility studies referred to in paragraph (3); but

(B) complete and final feasibility studies have not been prepared for any of those water storage projects;

(5) as of August 2014, only 2 of the 4 projects referred to in paragraph (3) have completed draft feasibility studies;

(6) the slow pace of work on completion of the feasibility studies for those 4 water storage projects is—

(A) unjustified; and

(B) of deep concern; and

(7) there is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address the water challenges of the State.

SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.

(a) In General.—Notwithstanding subparagraph (B)(i) of section 103(d)(1) of Public Law 108–361 (118 Stat. 1684), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), shall complete a final feasibility study and any other applicable environmental review documents for the project described in—

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(1) subparagraph (A)(i)(I) of that section by not later than December 31, 2014;

(2) subparagraphs (A)(ii)(I) and (II) of that section by not later than ~~July 31~~ November 30, 2015.

(b) Environmental Reviews.—In carrying out subsection (a), the Secretary—

(1) shall ensure that—

(A) all applicable reviews, including reviews required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), are completed as expeditiously as practicable; and

(B) the shortest applicable process under that Act is used, including in the completion of—

(i) feasibility studies;

(ii) draft environmental impact statements; and

(iii) final environmental impact statements; and

(2) shall not be required to complete a draft or final environmental impact statement if the Commissioner of Reclamation determines, and the Secretary concurs, that the project fails to meet applicable Federal cost-benefit requirements or standards.

(c) Accountability.—

(1) If the Bureau of Reclamation determines that an environmental review document for the water storage projects referenced in of Section 103(d)(1) of P.L. 108-361 will not be completed according to the schedule specified in subsection (a), the Bureau shall notify the Senate Committee on Energy and Natural Resources, the Senate Appropriations Subcommittee on Energy and Water Development, the House of Representatives Natural Resources Committee, and the House of Representatives Transportation and Infrastructure Committee within 14 days of the determination. The notification shall include:

(A) An explanation of the delay;

(B) The anticipated length of the delay and the revised completion date;

(C) The steps that the Bureau will take to mitigate the delay, including, but not limited to, a request to reprogram existing funds appropriated to the Bureau to meet the revised completion deadline.

(2) The Bureau of Reclamation shall carry out the procedures in subsection (a) for each subsequent delay beyond the revised completion deadline.

~~(3) IN GENERAL—[Subject to paragraph (2),] if the Secretary fails to complete a feasibility study or environmental review required for any water storage project referred to in subsection (a) in accordance with the schedule specified in that subsection, the amounts made available to the Policy and Administration Account of the Bureau of Reclamation for fiscal year 2015 shall be withheld and reduced by an amount equal to the product obtained by multiplying—~~

~~(A) \$20,000; and~~

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(B) the number of weeks during the period beginning on the applicable deadline for completion of the feasibility study or environmental review and ending on the date on which the final feasibility study or environmental review is completed.

(4) DISTRIBUTION.—If the relevant feasibility study or environmental review is delayed beyond the schedule specified in subsection (a), the percentage of withheld funds that shall be released and made available to the Bureau of Reclamation on completion of the feasibility study or environmental review document shall be—

(A) in the case of a delay the duration of which is less than [or equal to] 90 days, 100 percent of the withheld funds;

(B) in the case of a delay the duration of which is more than 90 days but less than [or equal to] 180 days, 75 percent of the withheld funds;

(C) in the case of a delay the duration of which is more than 180 days but less than [or equal to] 270 days, 50 percent of the withheld funds;

(D) in the case of a delay the duration of which is more than 270 days but less than [or equal to] 1 year, 25 percent of the withheld funds; and

(E) in the case of a delay the duration of which is more than 1 year, 0 percent of the withheld funds.

SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.

(a) The Secretary, acting through the Commissioner of the Bureau of Reclamation, may partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of the Water Supply Reliability and Environmental Improvement Act (Public Law 108-361) (and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects.

(b) ~~PLACEHOLDER FOR AUTHORIZATION ISSUE~~ If the Secretary determines a project described in Sections 402(a)(1) and (2) is feasible, the Secretary is authorized to carry out the project in a manner that is substantially in accordance with the recommended plan, and subject to the conditions described in the feasibility study, provided that no federal funding shall be used to construct the project. Construction Authorization.—

(1) IN GENERAL.—Each water storage project identified under clauses (i) and (ii) of section 103(d)(1)(A) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-361; 118 Stat. 1684) is authorized for construction on completion of the required feasibility study and environmental impact statement, if the Secretary certifies in writing that, based on the feasibility study and the environmental impact statement, the water storage project—

(A) has a positive benefit-cost ratio; and

(B) is in the interest of the United States.

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(2) FUNDING.—No other funds, except those amounts described in section 103(f)(2)(A) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-361; 118 Stat. 1695) authorized for implementation of the Environmental Water Account that are available and unobligated as of the date of enactment of this Act, shall be used to pay the Federal share of the cost of construction of the water storage projects authorized by this subsection.

(c) PRECONSTRUCTION.—With respect to a water storage project authorized by subsection (b), the Secretary shall implement the shortest practicable process provided under applicable law (including regulations) to complete any remaining study, assessment, consultation, or review supporting commencement of construction of the project.

SEC. 404 . DAM SAFETY PROJECTS WITH INCREASED STORAGE COMPONENT.

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

“SEC. 5B. ADDITIONAL PROJECT BENEFITS.

“(a) In General.—Notwithstanding section 3, if the Secretary, ~~in the judgment of the Secretary,~~ makes a determination described in subsection (b), the Secretary is authorized to develop any additional project benefit—

“(1) through the construction of new or supplementary works on a project in conjunction with the activities carried out by the Secretary pursuant to section 2; and

“(2) subject to the conditions described in the feasibility study relating to the project.

“(b) Description of Determination.—A determination referred to in subsection (a) is a determination by the Secretary that—

“(1) an additional project benefit, including but not limited to additional conservation storage capacity, is—

“(A) necessary; and

“(B) in the interests of the United States; and

“(2) the project benefit proposed to be carried out is—

“(A) feasible; and

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“(B) not inconsistent with the purposes of this Act.

“(c) Requirements.—The costs associated with developing an additional project benefit under this section shall be—

“(1) allocated to entity or entities benefitting from the additional conservation storage capacity, subject to agreement between the state and federal funding agencies on such allocations; and

“(2) repaid in accordance with all applicable provisions of Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).”.

(b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) is amended—

~~“(1) by striking “Funds” and inserting the following:~~

~~“(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner of Reclamation shall submit to Congress—~~

~~“(I) an expansion draft environmental impact statement and feasibility study relating to the San Luis Reservoir by not later than April 1, 2016; and~~

~~SEC. 406. UPDATING WATER OPERATIONS MANUALS
FOR NON FEDERAL PROJECTS.~~

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SEC. 501. PROTECTIONS FOR STATE WATER PROJECT
CONTRACTORS.

(a) The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(i) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;

(ii) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or

(iii) requires take authorization under section 2081 for operation of the State Water Project in a manner that directly or indirectly results in

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reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion,

and as a consequence of the Department's action, Central Valley Project yield is greater than it would have been absent the Department's actions, that additional yield shall be made available to the State Water Project for delivery to State Water Project contractors to offset losses resulting from the Department's action. The Secretary shall immediately notify the Director of the California Department of Fish and Wildlife in writing if the Secretary determines that implementation of the Biological Opinions consistent with this Act reduces environmental protections for any species covered by the opinions.

SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities and to honor water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2, Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) Any action undertaken by the Secretary or the Secretary of Commerce pursuant to both this Act and Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531, et seq.), as amended, that requires that diversions from the Sacramento River or the San Joaquin River watersheds upstream of the Delta be bypassed shall not be undertaken in a manner that alters the water rights priorities established by California law. Nothing in this Title alters the existing authorities provided to and obligations placed upon the Federal government under the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.), as amended. (c) With respect to individuals and entities with water rights on the Sacramento River, the mandates of this Section may be met, in whole or in part, through a contract with the Secretary executed pursuant to Section 14 of Public Law 76-260, 53 Stat. 1187 (43 USC § 389) that is in conformance with the Sacramento River Settlement Contracts renewed by the Secretary in 2005.

SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

(a) The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) as amended and other applicable federal and state laws, shall not directly or indirectly result in the involuntary reduction of water supply or fiscal impacts to individuals or districts who receive water from either the State Water Project or the United States under water rights settlement contracts, exchange contracts, water service contracts, repayment contracts, or water supply contracts or cause redirected adverse water supply or fiscal impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water

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Project service area.

(b) To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.

(c) Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange contracts and settlement contracts prior to the allocation of any other Central Valley Project water.

(d) Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing State Water Project water supply or settlement contract with the State.

SEC. 504. EFFECT ON STATE LAWS.

Nothing in this Act preempts ~~[[any state law in effect on the date of enactment of this Act]]~~ or ~~modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law including established water rights priorities.~~ ~~[John Watts objected to the deletion; there will be follow up discussion with Kyle Lombardi when he is available.]~~ Nothing in this Act preempts any State law in effect on the date of enactment of this Act, including area of origin and other water rights protections.

SEC. 505. ALLOCATIONS FOR SACRAMENTO VALLEY CONTRACTORS~~[TO BE TITLED]~~.

Commented [A13]: Need to see if its right.

(a) In General.--Subject to: (i) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project; (ii) the United States' obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; (iii) the Secretary's obligation to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act, (Pub. Law 102-575,)and (iv) subsection (b), the Secretary is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

(1) Not less than 100% of their contract quantities in a "Wet" year.

(2) Not less than 100% of their contract quantities in an "Above Normal" year.

(3) Not less than 100% of their contract quantities in a "Below Normal" year that is preceded by an "Above Normal" or a "Wet" year.

(4) Not less than 50% of their contract quantities in a "Dry" year that is preceded by a "Below Normal," an "Above Normal," or a "Wet" year.

(5) In all other years not identified herein, the allocation percentage for existing Central Valley Project agricultural water service contractors within the Sacramento River

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1 Watershed shall not be less than twice the allocation percentage to south-of-Delta Central Valley
2 Project agricultural water service contractors, up to 100%; provided, that nothing herein shall
3 preclude an allocation to existing Central Valley Project agricultural water service contractors
4 within the Sacramento River Watershed that is greater than twice the allocation percentage to
5 south-of-Delta Central Valley Project agricultural water service contractors.

6 (b) Protection of Municipal and Industrial Supplies.--Nothing in subsection (a) shall be
7 deemed to: (i) modify any provision of a water service contract that addresses municipal and
8 industrial water shortage policies of the Secretary; (ii) affect or limit the authority of the
9 Secretary to adopt or modify municipal and industrial water shortage policies; (iii) affect or limit
10 the authority of the Secretary to implement municipal and industrial water shortage policies; or
11 (iv) affect allocations to Central Valley Project municipal and industrial contractors pursuant to
12 such policies. Neither subsection (a) nor the Secretary's implementation of subsection (a) shall
13 constrain, govern or affect, directly or indirectly, the operations of the Central Valley Project's
14 American River Division or any deliveries from that Division, its units or its facilities.

15 (c) This section does not affect the allocation of water to Friant Division contractors and shall
16 not result in the involuntary reduction in contract water allocations to individuals or entities with
17 contracts to receive water from the Friant Division.

18 (d) The Secretary will direct that the United States Bureau of Reclamation develop and
19 implement a program, within one year of enactment of this bill, to provide for the opportunity for
20 existing Central Valley Project agricultural water service contractors within the Sacramento
21 River Watershed to reschedule water, provided for under their CVP water service contracts, from
22 one year to the next.

23 (e) Definitions.--In this section:

24 (1) The term "existing Central Valley Project agricultural water service contractors
25 within the Sacramento River Watershed" means water service contractors within the Shasta,
26 Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service
27 contract in effect, on the date of the enactment of this section, that provides water for irrigation.

28 (2) The year type terms used in subsection (a) have the meaning given those year types
29 in the Sacramento Valley Water Year Type (40-30-30) Index.

30
31 **TITLE VI—MISCELLANEOUS**

32 **SEC. 601_. AUTHORIZED SERVICE AREA.**

33 (a) In General.—The authorized service area of the Central Valley Project authorized under
34 the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include
35 the area within the boundaries of the Kettleman City Community Services District, California, as
36 in existence on the date of enactment of this Act.

37 (b) Long-term Contract.—

38 (1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public
39 Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in
40 accordance with the reclamation laws, shall enter into a long-term contract with the

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Kettleman City Community Services District, California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for water deliveries authorized under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

~~SEC. 602. RESCHEDULED WATER.~~

(a) Report; Advisory Board.—Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into the Restoration Fund during the preceding fiscal year.

“(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each expenditure.

“(h) Advisory Board.—

“(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board (referred to in this section as the ‘Advisory Board’), which shall be composed of 154 members appointed by the Secretary.

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—The Secretary shall appoint members to the Advisory Board that represent the various Central Valley Project stakeholders, of whom—

“(i) 3 members shall be agricultural users of the Central Valley Project;

“(ii) 2 members shall be municipal and industrial users of the Central Valley Project;

“(iii) 3 members shall be power contractors of the Central Valley Project;

“(iv) 1 member shall be a representative of a federal wildlife refuge that contracts for Central Valley Project water supplies with the Bureau of Reclamation;

“(v) 1 member shall represent nongovernmental organizations involved in the protection and restoration of California fisheries;

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“(vi) 1 member shall represent the commercial fishing industry;

“(vii) 1 member shall represent the recreational fishing industry; and

“(viii) 2 members shall be appointed at the discretion of the Secretary.

“(ix) 1 member shall be an economist have expertise in the economic impact of changes to water operations.

“(B) OBSERVER.—The Secretary and the Secretary of Commerce may each designate a representative to act as an observer of the Advisory Board.

“(C) CHAIRMAN.—The Secretary shall appoint 1 of the members described in subparagraph (A) to serve as Chairman of the Advisory Board.

“(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

“(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

“(5) Vacancies.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(C) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

“(6) Removal —A Member of the Panel may be removed from office by the Secretary of the Interior.

“(7) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

“(8) DUTIES.—The duties of the Advisory Board are—

“(A) to meet not less frequently than semiannually to develop and make recommendations to the Secretary regarding priorities and spending levels on projects and programs carried out under this title;

“(B) to ensure that any advice given or recommendation made by the Advisory Board reflects the independent judgment of the Advisory Board;

“(C) not later than December 31, 2015, and annually thereafter, to submit to the Secretary and Congress the recommendations under subparagraph (A); and

“(D) not later than December 31, 2015, and biennially thereafter, to submit to Congress a report that details the progress made in achieving the actions required under section 3406.

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“(9) ADMINISTRATION.—With the consent of the appropriate agency head, the Advisory Board may use the facilities and services of any Federal agency.”

“(10) Cooperation and Assistance.—

(A) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(B) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

~~SEC. 603. WATER OPERATIONS REVIEW PANEL.~~

~~SEC. 6067056. CONTINGENCY IN EVENT OF CONTINUING RESOLUTION FOR FISCAL YEAR 2015.~~

~~SEC. 603. YIELD ACCOUNTING~~~~Sec. 604603. WATER SUPPLY ACCOUNTING.~~

~~All Central Valley Project water, except Central Valley Project water released from the Friant Division pursuant to the San Joaquin River Restoration Settlement Act (Public Law 111-11) and water released pursuant to the December 2000 Trinity River Mainstem Fishery Restoration Record of Decision, used to implement an action undertaken for a fishery beneficial purpose that was not imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing on October 30, 1992, shall be credited to the quantity of Central Valley Project yield dedicated and managed under this section; provided, that nothing herein shall affect the Secretary's duty to comply with any otherwise lawful requirement imposed on operations of the Central Valley Project under any provision of federal or state law.~~

~~Sec. 605-604 . IMPLEMENTATION OF WATER REPLACEMENT PLAN.~~

~~(a)Not later than October 1, 2015, the Secretary shall update and implement the plan required by Section 3408(j) of Title 34 of Public Law 102-575. The Secretary shall provide reports to the Congress annually describing the progress of implementing the plan required by Section 3408(j) of Title 34 of Public Law 102-575.~~

~~(2) IN GENERAL. [Subject to paragraph (32).] if the Secretary fails to update and implement the plan required by paragraph (1) of this section in accordance with the schedule specified in that subsection, the amounts made available to the Policy and Administration Account of the Bureau of Reclamation for fiscal year 2015 shall be withheld and reduced by an amount equal to the product obtained by multiplying~~

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Commented [A15]: We want to discuss this section and whether there are any alternative ways to address the underlying concern while minimizing the potential scope of the language.

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~~Sec. 606 . RESTORATION FUND.~~

~~Sec. 607-608 . NATURAL AND ARTIFICIALLY SPAWNED SPECIES.~~

~~Sec. 608-606 . AMENDMENT TO PURPOSES~~

Section 3402 of the Central Valley Project Improvement Act (106 Stat. 4706) is amended—

(1) in subsection (f), by striking the period at the end; and

(2) by adding at the end the following:

“(g) to ensure that water dedicated to fish and wildlife purposes by this title is replaced and provided to Central Valley Project water contractors as soon as is practicable by December 31, 2018, at the lowest financial cost reasonably achievable; and

~~Sec. 609-607 . AMENDMENT TO DEFINITION~~

“Section 3406(b) of the Central Valley Project Improvement Act (106 Stat. 4710) is amended by adding the following:

(24) Limitation Clause. Nothing in this section shall preclude the take of non-native fish for scientific study or to reduce the effects of predation by non-native fish on species listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)”

~~Section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707) is amended—~~

SEC. 608—. DEADLINES FOR CERTAIN AGENCY ACTIONS IN THE ABSENCE OF AVAILABLE FUNDING.

(a) Not later than 30 days after the date of enactment of this Act, and in any subsequent fiscal year, not later than 30 days after the date of enactment of legislation providing appropriations to the Departments of the Interior and Commerce, or the latest such legislation if such bills are enacted separately, the Secretaries of the Interior and Commerce shall submit to the Committees on Appropriations of the House of Representatives and the Senate a detailed spend plan for federal, state, and local funds that remain available for obligation or expenditure in the current fiscal year for the agency actions prescribed in sections 103(b), 103(d), 202, 204, 205, and 308(1).

(b) Not later than 30 days after submission of the spend plan required by subsection (a), following consultation with the Committees on Appropriations of the House of Representatives and the Senate, the Secretaries of the Interior and Commerce may extend the deadlines contained in sections 103(b), 103(d), 202, 204, 205, and 308(1) until the enactment of subsequent

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1 appropriations legislation for the following fiscal year if there is not sufficient funding available
2 for obligation or expenditure for the agency actions prescribed in such sections.
3
4

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From: Tom Birmingham

Sent: Wednesday, December 17, 2014 11:24 PM

To: Watts, John (Feinstein)

CC: David L. Bernhardt

Subject: Re: Can you call me at some point (today, if possible) to discuss the attached confidential issues document?
Thanks

That time works for me. David will join if available. Let's use (800) [REDACTED] - [REDACTED] pass code [REDACTED] as the call in number.

Sent from my iPhone

On Dec 17, 2014, at 7:04 PM, "Watts, John (Feinstein)" <John_Watts@feinstein.senate.gov> wrote:

Does Friday at 2 pm eastern time, 11 am pacific, work for you? If not, I could do a little earlier or later on Friday. Do you plan to include David on the call?

Thanks.

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]

Sent: Wednesday, December 17, 2014 12:59 PM Eastern Standard Time

To: Watts, John (Feinstein)

Subject: RE: Can you call me at some point (today, if possible) to discuss the attached confidential issues document? Thanks

John,

I don't know if it is good or bad news, but I am still the GM of Westlands. Thank you for your support.

I am tied up all day today and tomorrow. Is it possible to speak on Friday about the documents you sent to me? If yes, please let me know a convenient time.

Tom

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]

Sent: Monday, December 15, 2014 9:15 AM

To: Tom Birmingham; Bernhardt, David L.

Subject: Can you call me at some point (today, if possible) to discuss the attached confidential issues document? Thanks

Tom,

I hope you had a good weekend.

I know you have your board meeting this week and all that the meeting entails. If possible, can you call me at some point today to discuss the attached plan document? David is welcome to join as well. I have also attached the latest draft of the bill for your reference. Thanks.

Best,

John

From: Watts, John (Feinstein)
Sent: Friday, December 19, 2014 12:02 PM
To: Tom Birmingham
CC: David L. Bernhardt
Subject: RE: Can you call me at some point (today, if possible) to discuss the attached confidential issues document? Thanks

I am getting a message that the pass code below is wrong.

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Thursday, December 18, 2014 1:24 AM
To: Watts, John (Feinstein)
Cc: David L. Bernhardt
Subject: Re: Can you call me at some point (today, if possible) to discuss the attached confidential issues document? Thanks

That time works for me. David will join if available. Let's use (800) [REDACTED] - [REDACTED] pass code [REDACTED] as the call in number.

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